

Model Answers to the Conveyancing Examination

May 2013

Part 1

Self-Study Deeds Course

Question 1 - Model answer ¹ [25]

- 1.1 We, the undersigned,
Mary Blog and Steve Blog in their capacities as parents and natural guardians of
Bennie Blog
Born on 8 April 2008
a minor [2]
- 1.2 I, the undersigned,
Bennie Blog
Born on 2 February 1999 ²
a minor
duly assisted by my parents and natural guardians, Mary Blog and Steve Blog [2]
- 1.3 We, the undersigned,
1 Jo Malema
Identity number 880205 5487 08 8
married to Patricia Malema, which marriage is governed by the laws of Kenya, duly assisted by my spouse
- 2 Patricia Malema
Identity number 880915 0085 08 7
married to Jo Malema, which marriage is governed by the laws of Kenya, duly assisted by my spouse [4]
- 1.4 I, the undersigned
Max du Preez
Identity number 701212 5796 08 2
married in community of property to Ethel du Preez [2]

¹ This question was also asked as question 1 in May 2010, Part 1, for 25 marks.

² Or "identity number ..."

- 1.5 We, the undersigned,
1 Riad Moosa
Identity number 680512 5369 08 8
married according to muslim rites

2 Sadia Moosa
Identity number 720330 0001 08 7
married according to muslim rites [4]
- 1.6 We, the undersigned
Saul Peters in my capacity as executor in the estate of the late James Grant,
estate number 4597/2013, acting under Letters of Executorship issued by the
Master of the North Gauteng High Court, Pretoria on 25 April 2013
and
Merle Grant
Identity number 451201 0578 082
widow, in my personal capacity as surviving spouse of the deceased to
whom I was married in community of property [4]
- 1.7 I, the undersigned
Saul Peters in my capacity as executor in the estate of the late James Grant,
estate number 4597/2013, acting under Letters of Executorship issued by the
Master of the North Gauteng High Court, Pretoria on 25 April 2013 [2]
- 1.8 I, the undersigned,
Avril Lavigny (previously Bloch)
Identity number 651203 0685 08 2
unmarried [2]
- 1.9 I, the undersigned,
Dudu Kheso
duly authorised thereto by virtue of a General Power of Attorney signed at
Pretoria on 12 December 2012 and registered under PA 124/2013 in the
deeds office at Pretoria and granted to me by
Ben Bredenkamp
Identity number 550813 5698 08 7
married out of community of property [3]

Question 2 - Model answer ³

[15]

2.1 Portion 93 (a portion of portion 45) of the Farm Bergbron 92
Registration Division J.R., Province of Gauteng

Measuring 94,1234 (ninety four comma one two three four) hectares

As will appear from annexed diagram S.G. No. 45/2011 and held by Deed of
Transfer T3/2009.⁴ [7]

2.2 First transferred and still held by Deed of Transfer T7/2013 with diagram
S.G. No. 45/2011 relating thereto.⁵ [4]

2.3.1 Application must be made by the registered owner for the issue of a
Certificate of Registered Title in terms of section 43 of the Deeds Registries
Act for the portion that was surveyed, to which the sub-divisional diagram
must be attached, as it is to remain registered in the name of such owner. [2]

2.3.2 First transferred by Deed of Transfer T7/2013 with diagram S.G. No. 45/2011
relating thereto ⁶ and held by Deed of Transfer T5001/2013.⁷ [2]

³ This question was also asked in May 2010 (Part 1), question 2 for 15 marks.

⁴ Form TT issued under the Deeds Registries Act is used if a property is created
as an entity on its own for the first time.

⁵ Or annexed thereto. Form UU adapted is used for the second transfer of the
property.

⁶ Or annexed thereto.

⁷ Form UU is used, as a new property is not now being transferred, but what is
left over of an already existing property. The title deed for the remaining
extent reflects the extending clause drafted according to form UU adapted.

Question 3 - Model answer ⁸

[40]

3.1

Prepared by me

CONVEYANCER

Erinda Frantzen

Application in terms of Section 17(4) of the Deeds Registries Act 47 of 1937

We, the undersigned

1 Greg Warner

Identity Number 630102 6262 08 2

a partner in a civil partnership out of community of property registered in terms of the Civil Union Act 17 of 2006

2 David Mtshali

Identity number 690519 5794 08 6

a partner in a civil partnership out of community of property registered in of terms of the Civil Union Act 17 of 2006

do hereby make oath and say that -

1 A civil partnership between us was solemnised on 3 July 2012.

2 Prior to the solemnisation and registration of such civil partnership, we entered into an antenuptial contract with the exclusion of the community of property and of profit and loss. Such antenuptial contract was duly registered in the deeds registry within the three month period from date of notarial execution thereof, in the deeds registry in Bloemfontein under H137/2012.

3 As proof of such civil partnership, we attach hereto a copy of the registration certificate issued by the Department of Home Affairs, reflecting the conclusion and registration of such partnership.

4 The said civil partnership between ourselves still subsists.

5 l) A unit consisting of -

a) **Section 132** as shown and more fully described on sectional plan **SS159/2002** in the scheme known as **Happy Days** in respect of the land and the building or buildings situate at **Bloemfontein**, Local

⁸ This question was asked in May 2010 (Part 1), question 3 for 40 marks.

Authority: **Local Municipality of Mangaung**, of which section the floor area, according to the said section plan is **120 (one hundred and twenty)** square metres in extent; and

- b) an undivided d 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 ST44/2011

II) A unit consisting of

- a) **Section 133** as shown and more fully described on sectional plan **SS159/2002** in the scheme known as **Happy Days** in respect of the land and the building or buildings situate at **Bloemfontein**, Local Authority: **Local Municipality of Mangaung**, of which section the floor area, according to the said section plan is **120 (one hundred and twenty)** square metres in extent; and
- b) an undivided d 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 ST44/2011

are registered in our names but our status are still reflected as “unmarried” therein.

- 6 The aforesaid properties are not mortgaged and there are no mutually dependant deeds requiring endorsement.

We hereby apply to the Registrar of Deeds at Bloemfontein for the endorsement of the aforesaid Deed of Transfer T44/2011 to the effect that our respective status are reflected as “**partners in a civil partnership out of community of property registered in terms of the Civil Union act 17 of 2006**”.

G Warner

D Mtshali

I certify that the deponents have acknowledged that they know and understand the content of this affidavit, which was signed and sworn before me at Bloemfontein on 9 May 2013 and that the provisions of the Regulations contained in Government Notice R1258 of 21 July 11972 (as amended) have been complied with

Commissioner of Oaths [15]

Application under Section 15B(5)
of the Sectional Titles Act 1986

I, the undersigned,

Greg Warner

Identity Number 630102 6262 08 2

a partner in a civil partnership out of community of property registered in terms of the Civil Union Act 17 of 2006

joint owner of:-

- 1) A unit consisting of -
 - a) **Section 132** as shown and more fully described on sectional plan **SS159/2002** in the scheme known as **Happy Days** in respect of the land and the building or buildings situate at **Bloemfontein**, Local Authority: **Local Municipality of Mangaung**, 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 Deed of Transfer ST44/2011

- 2) A unit consisting of -
 - a) **Section 133** as shown and more fully described on sectional plan **SS159/2002** in the scheme known as **Happy Days** in respect of the land and the building or buildings situate at **Bloemfontein**, Local Authority: **Local Municipality of Mangaung**, of which section the floor area, according to the said sectional plan is 120 (one hundred and twenty) square metres in extent; and

⁹

Form I in the regulations to the **Sectional Titles Act** must be used.

- 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 ST44/2011

do hereby apply to the Registrar of Deeds at Bloemfontein for the issue to me of a Certificate of Registered Title in respect of an undivided $\frac{1}{2}$ (one half) share in the aforesaid units.

Signed at Bloemfontein on 7 May 2013

Greg Warner

Question 3.2 continues on the following page

Question 4.1 - Model answer

[3]

- 4.1 I will draft an application and affidavit to be signed by Peter Moya and his wife, Mary Moya, in terms of section 4(1)(b) of the Deeds Registries Act, to be lodged together with the title deed T111/2012. If a mortgage bond is registered over the relevant property, I will have to obtain the consent of such mortgagee to the rectification and also lodged this together with the application.

The model answer to **question 4.2** can be found on page 11 below.

**Certificate of Registered Sectional Title
issued under Section 15B(5)
of the Sectional Titles Act 1986**

I, the Registrar of Deeds at Bloemfontein, hereby certify that

Greg Warner

Identity Number 630102 6262 08 2

a partner in a civil partnership out of community of property registered in terms
of the Civil Union Act 17 of 2006

is the registered owner of -

- 1) an undivided one half ($\frac{1}{2}$) share in a unit consisting of -
 - a) **Section 132** as shown and more fully described on sectional plan **SS159/2002** in the scheme known as **Happy Days** in respect of the land and the building or buildings situate at **Bloemfontein**, Local Authority: **Local Municipality of Mangaung**, 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 virtue of Deed of Transfer ST44/2011

The unit is subject to or shall benefit by -

- i) the servitudes, other real rights and conditions, if any, as contained in the schedule of conditions referred to in section 11(3)(b) and the servitudes referred to in section 28 of the Sectional Titles Act, 1986; and
 - ii) any alteration to the building or buildings or to a section or to the common property shown on the said sectional plan.
- 2) an undivided one half ($\frac{1}{2}$) share in a unit consisting of -
 - a) **Section 133** as shown and more fully described on sectional plan **SS159/2002** in the scheme known as **Happy Days** in respect of the land and the building or buildings situate at **Bloemfontein**, Local Authority: **Local Municipality of Mangaung**, 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 virtue of Deed of Transfer ST44/2011

The unit is subject to or shall benefit by -

- i) the servitudes, other real rights and conditions, if any, as contained in the schedule of conditions referred to in section 11(3)(b) and the servitudes referred to in section 28 of the Sectional Titles Act, 1986; and
- ii) any alteration to the building or buildings or to a section or to the common property shown on the said sectional plan.

Signed at Bloemfontein on _____ 2013

Registrar of Deeds [20]

3.3

- 1) an undivided one half ($\frac{1}{2}$) share in a unit consisting of -
 - a) **Section 132** as shown and more fully described on sectional plan **SS159/2002** in the scheme known as **Happy Days** in respect of the land and the building or buildings situate at **Bloemfontein**, Local Authority: **Local Municipality of Mangaung**, 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 under Certificate of Registered Sectional Title ST357/2013 ¹⁰ and subject to such conditions as set out in the aforesaid deed and **especially subject to a right of pre-emption registered in favour of Susan Warner, identity number 451212 0005 08 2, unmarried as will more fully appear from notarial deed SK4/2012-S.**

- 2) an undivided one half ($\frac{1}{2}$) share in a unit consisting of -
 - a) **Section 133** as shown and more fully described on sectional plan **SS159/2002** in the scheme known as **Happy Days** in respect of the land and the building or buildings situate at **Bloemfontein**, Local Authority: **Local Municipality of Mangaung**, 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 under Certificate of Registered Sectional Title ST357/2013 and subject to such conditions as set out in the aforesaid deed and **especially subject to a right of pre-emption registered in favour of Susan Warner, identity number 451212 0005 08 2, unmarried as will more fully appear from notarial deed SK4/2012-S.** [5]

¹⁰ The question begins by mentioning that the Certificate of Registered Sectional Title for the one half share of Greg Warner in the two units has been registered. Therefore the shares in the units are now held by this Certificate.

Question 4.2 - Model answer

[7]

Prepared by me

CONVEYANCER

Erinda Frantzen

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

of the Deeds Registries Act 47 of 1937

We, the undersigned

Peter Moya

Identity Number 550911 5203 08 0

and

Mary Moya

Identity Number 600101 0073 08 7

Married in community of property to each other

hereby declare under oath that the following property namely -

- 1 Erf 23 Bloemfontein
District Bloemfontein, Province Free State

Measuring 1 200 (one thousand two hundred) square metres

Held by Deed of Transfer T111/2012

has on 3 May 2012 been registered only in the name of Peter Moya, described as unmarried.

- 2 We have however married each other in community of property on 14 April 2012, in other words before the property was registered into the name of Peter Moya alone.
- 3 The property therefore was registered incorrectly only in the name of Peter Moya, unmarried instead of in the names of both of us, married in community of property to each other.
- 4 Peter Moya forgot to inform the conveyancers attending to the transfer of his marriage in community of property that took place after he has signed his transfer documentation on 3 March 2012, but before registration thereof in the deeds office was effected.

There are no other deeds or documents in the deeds registry at Bloemfontein in which the said error is reflected.

- 5 We hereby apply to the Registrar of Deeds at Bloemfontein, in terms of Section 4(1)(b) of the Deeds Registries Act 47 of 1937, for the amendment of Deed of Transfer T111/2012 to reflect the property as being registered in both our names, married in community of property to each other.
- 6 This amendment will not have the effect of transferring any right.

Peter Moya

Mary Moya

Signed and sworn to before me at Bloemfontein on the 7th day of May 2013, the deponents having acknowledged that they fully understand the contents of this affidavit.

Commissioner of Oaths
Erinda Frantzen
Practicing Attorney
451 Church Street, Bloemfontein

Question 5 - Model answer ¹¹

[20]

- 5.1 Section 2 of the Recognition of Customary Marriages Act 120 of 1998 (herein after referred to as the Act) recognises the following marriages, namely -
- a) a marriage which is a valid marriage according to customary law and which exists at the commencement of the Act;
 - b) a customary marriage entered into after the commencement of the Act and which complies with all the requirements of the Act;
 - c) all valid customary marriages entered into before the commencement of the Act, if a person is a spouse in more than one customary marriage;
 - d) all marriages entered into after the commencement of the Act, which comply with the provisions of the Act, if a person is a spouse in more than one customary marriage.
- [4]

This question was also asked in May 2010 (Part 1), QQuestion 5 for 20 marks.

5.2 Customary law means the customs and usages traditionally observed among the indigenous African people of South Africa and which form part of the culture of those people. [2]

- 5.3
- a) The prospective spouses must both be above the age of 18 years;
 - b) The prospective spouses must both consent to be married to each other under customary law;
 - c) The marriage must be negotiated and entered into or celebrated in accordance with customary law;¹² and
 - d) No spouse of a marriage entered into under the Marriage Act, 1961, during the subsistence of such marriage, is competent to enter into any other marriage (including a customary marriage).¹³ [3]

5.4 John Mabinda must make an application to court to approve a written contract which will regulate the future matrimonial property system of his marriages. All parties with an interest must be cited as parties and be parties to the application. If it is granted, the registrar of the court must send copies of the court order and the contract to all the registrars of deeds in its jurisdiction area. The registrars of deeds must then record the court order and contract as an interdict against the parties' names. [3]

5.5 Siphiso Nxumalo
Identity number 800115 5578 08 2
and
Nonaindia Nxumalo
Identity number 811209 0457 08 7
married in community of property to each other [4]

5.6

- 1 Siphiso Nxumalo
Identity number 800115 5578 08 2
married out of community of property
- 2 Nonaindia Nxumalo
Identity number 811209 0457 08 7
married out of community of property [4]

¹² Section 3(1) of the Recognition of Customary Marriages Act 120/1998.

¹³ Section 10(4) of the Recognition of Customary Marriages Act. In other words the prospective spouses may not already be a party to a civil marriage.

Question 6 - Model answer

[30]

6.1

Prepared by me

CONVEYANCER
Gabriël Jacobus le Roux

Power of Attorney and Agreement to Partition Land ¹⁴

We, the undersigned,

- 1 Mary Lamb
Identity Number 510701 0017 08 8
unmarried

- 2 Delphinia Baxter
Identity Number 470107 0012 08 3
unmarried

being the joint owners of -

- 1) A unit consisting of -
 - a) **Section 132** as shown and more fully described on sectional plan **SS150/2000** in the scheme known as **Down Under** in respect of the land and the building or buildings situate 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 Deed of Transfer ST 753/2000

- 2) A unit consisting of -
 - a) **Section 133** as shown and more fully described on sectional plan **SS150/2000** in the scheme known as **Down Under** in respect of the land and the building or buildings situate 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

¹⁴ See **Examples 8 A & 8 E** in Part 4 of Self-Study Deeds Course for Attorneys.
This question has also been asked in May 2010 (Part 1), question 6.

- 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 T753/2000

Held by us as follows:-

Mary Lamb: ½ share in each unit by virtue of Deed of Transfer T753/2000

Delphinia Baxter: ½ share in each unit by virtue of Deed of Transfer T753/2000

do hereby declare that we have agreed to partition the said units by allocating a unit to each one of us as set out hereunder

AND 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 and to transfer the
properties to ourselves respectively as agreed as follows, namely:-

- 1 Allocated to Mary Lamb
Identity Number 510701 0017 08 8
unmarried

the following property, namely -

A unit consisting of -

- a) **Section 132** as shown and more fully described on sectional plan **SS150/2000** in the scheme known as **Down Under** in respect of the land and the building or buildings situate 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 Deed of Transfer ST 753/2000

2 Allocated to Delphinia Baxter
Identity Number 470107 0012 08 3
Unmarried

the following property, namely -

A unit consisting of -

a) **Section 133** as shown and more fully described on sectional plan **SS150/2000** in the scheme known as **Down Under** in respect of the land and the building or buildings situate 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 Deed of Transfer T753/2000

Subject to the following condition in favour of Mary Lamb, identity Number 510701 0017 08 8, unmarried:

i) The property may not be sold unless the registered owner has offered the property for sale to the said Mary Lamb and at a price which will be calculated as described in clause (ii) hereunder and the offer has been refused in writing.

ii) The purchase price offered in terms of the contract of sale in paragraph (i) above, shall be determined by mutual agreement or failing such mutual agreement, by a sworn appraisal of the value of the property by a sworn appraiser nominated by the parties jointly for such purpose. In the event of the parties failing to agree upon a sworn appraiser, such sworn appraiser shall be nominated by a senior partner of Gawie le Roux Attorneys of 451 Flinders Lane, Lynnwood, or their successors.

And we do hereby declare that for the purpose of equalising the partition, Mary Lamb will pay to Delphinia Baxter R1 000 000,00 (one million rand) in consideration upon transfer of the above property into her name.

Signed at Pretoria on 7 May 2013

As witnesses: 1 _____

Mary Lamb

2 _____

Delphinia Baxter [20]

6.2 In terms of Section 9(1)(g) of the Transfer Duty Act, transfer duties shall not be payable on partition transfers, provided that if any consideration is paid by one of the parties to the partition to equalise the partition, transfer duty shall be payable on the amount of such consideration. The transfer duty is payable by the person who pays the consideration to equalise the partition. Mary Lamb is thus liable to pay transfer duty on the amount of R1 000 000,00.

According to a conference resolution,¹⁵ a pre-emptive right that does not bind successors in title is not “property” as defined in the Transfer Duty Act and therefore no transfer duty is payable on the acquisition of such pre-emptive right. [5]

Question 7 - Model answer ¹⁶ [45]

7.1

See the answer to **question 7.1** on the following page.

7.2.1 The same mortgage bond B4863/2011 for an amount of R1 220 000,00 is registered over all three component properties, namely Erf 4, 5 and 6 Best Buy Township, to be consolidated. This bond must be dealt with in accordance with section 40 of the Deeds Registries Act simultaneously with the consolidation. [2]

7.2.2 The mortgagee must consent to the consolidation of the component properties that are mortgaged, to the substitution of the consolidated property for the component properties that are currently mortgaged and to the issue of a certificate of consolidated title for the consolidated property, subject to the operation of the bond in terms of section 40(3) of the Deeds Registries Act. Prescribed form MM issued under the Deeds Registries Act is to be used for this consent. The bond will remain subject to all the conditions of title as set out in the certificate of consolidated title, and especially to the rights in favour of the Hubbly Bubbly Homeowners Association. [8]

¹⁵ RCR34/2013.

¹⁶ A similar question was also asked in May 2010 (Part 1), question 7, for 60 marks.

CONVEYANCER
Gabriël Jacobus le Roux

Application in terms of Section 40
of the Deeds Registries Act 47 of 1937 ¹⁷

I, the undersigned

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

THE JOHN JONES TRUST

Registration number IT 3243/2000

acting under Letters of Authority issued by the Master of High Court at Johannesburg on 16 September 2000

do hereby apply in terms of section 40 of the Deeds Registries Act 47 of 1937 to the Registrar of Deeds at Johannesburg, for the issue to the Trust of a Certificate of Consolidated Title in respect of -

- 1 Erf 4 Best Buy Township
Registration Division I.Q., Province of Gauteng
measuring 599 (five nine nine) square metres
Held by Deed of Transfer T3/2011

- 2 Erf 5 Best Buy Township
Registration Division I.Q., Province of Gauteng
measuring 1000 (one thousand) square metres
Held by Deed of Transfer T3/2011

- 3 Erf 6 Best Buy Township
Registration Division I.Q., Province of Gauteng
measuring 1000 (one thousand) square metres
Held by Deed of Transfer T3/2011

which properties on consolidation will be known as -

Erf 55 Best Buy Township
Registration Division I.Q., Province of Gauteng
measuring 2 599 (two five nine nine) square metres
as will appear from diagram S.G. No. 35/2012.

Signed at Johannesburg on this 7th day of May 2013.

On behalf of THE JOHN JONES TRUST

¹⁷ See **Example 9 B** in Part 4 of Self -Study Deeds Course for Attorneys.

Form O

CONVEYANCER
Gabriël Jacobus le Roux

Certificate of Consolidated Title¹⁸

WHEREAS -

THE TRUSTEES OF THE JOHN JONES TRUST
Registration number IT 3243/2000

has applied for the issue to the said trust of a Certificate of Consolidated Title under the provisions of Section 40 of the Deeds Registries Act, 1937,

AND WHEREAS the said company is the registered owner of:

1 Erf 4 Best Buy Township
Registration Division I.Q., Province of Gauteng

Held by deed of Transfer T3/2011

2 Erf 5 Best Buy Township
Registration Division I.Q., Province of Gauteng

Held by Deed of Transfer T3/2011

3 Erf 6 Best Buy Township
Registration Division I.Q., Province of Gauteng

Held by Deed of Transfer T3/2011

which have been consolidated into the land hereinafter described.

¹⁸ See **Example 9 D** in Part 4 of Self-Study Deeds Course for Attorneys.

NOW, THEREFORE, in pursuance to the provisions of the said Act, I the Registrar of Deeds at Johannesburg, do hereby certify that the said

THE TRUSTEES OF THE JOHN JONES TRUST

Registration number IT3243/2000

their successors in office or assigns, is the registered owner of

Erf 55 Best Buy Township

Registration Division I.Q., Province of Gauteng

measuring 2 599 (two five nine nine) square metres

as will appear from diagram S.G. No. 35/2012 annex hereto

Subject to the following conditions: ¹⁹

- 1 Subject to the following conditions imposed by and enforceable by the Local Authority:
 - a) The erf is subject to a servitude two metres wide in favour of the local authority, for sewerage and other municipal purposes, along one only of its boundaries other than a street boundary as determined by the local authority.
 - b) No building or other structure shall be erected within the aforesaid servitude area and no large-rooted trees shall be planted within the area of such servitude or within two metres thereof.²⁰
- 2 The property may not be transferred to any person who has not bound himself/herself to become a member of the Hubby Bubbly Homeowners Association.
- 3 The former Erven 4, 5 and 6 Best Buy Township indicated by the figures ABGHA, BCFGB and CDEFC on consolidation diagram SG No 35/2012 respectively, have been Notarially Tied and are regarded as one property. The properties may not be alienated, transferred or separately dealt with without the consent of the Local Authority as will more fully appear from Notarial Tie Agreement K844/2004.²¹

¹⁹ These conditions are qualified in accordance with the practice in the former Transvaal. Make sure that you know what the practice in the province is where you are going to write your exam. Note that condition D has been omitted, as any condition referring to a persons race may not be perpetuated into the following deed.

²⁰ As all three component properties are subject to the first three conditions, the whole property is made subject thereto, without any qualification.

²¹ Although this condition will become unnecessary as soon as consolidation has taken place, it must be perpetuated in the certificate of consolidated title. The whole of the consolidated property could also have been made

- 4 The former Erf 4 Best Buy Township, indicated by the figure ABGHA on consolidation diagram 35/2012 is subject to - ²²
- a) The property is subject to a right of way servitude, now indicated by the figure abcd on attached consolidation diagram S.G. no 35/2012 in favour of Erf 9 Best Buy Township as will more fully appear from Notarial Deed of Servitude K11/2002S with diagram S.G. no 1/2002 annexed thereto.
 - b) The property is subject to a Pipeline Servitude, now indicated by the figure klmn on attached consolidation diagram S.G. no 35/2012 in favour of Erf 9 Best Buy Township as will more fully appear from Notarial Deed of Servitude K12/2001S with diagram S.G. no 2293/2001 relating thereto.
- 5 The former Erf 5 Best Buy Township, depicted by the figure BCFGB on annexed consolidation diagram S.G. no 35/2012, is subject to the following condition:²³
The property is subject to a right of way servitude, now depicted by the figure rstu on attached consolidation diagram S.G. no 35/2012, for Municipal Purposes in favour of the Local Authority.
- 6 The former Erf 6 Best Buy Township, depicted by the figure CDEFC on annexed consolidation diagram S.G. no 35/2012, is subject to the following condition:²⁴
The property is subject to a garden servitude, now indicated by the figure vwxy on annexed consolidation diagram S.G. no 35/2012, in favour of Erf 12 Best Buy Township as will more fully appear from Notarial Deed of Servitude K13/ 2002S with diagram S.G. no 16/2002 annexed thereto.

And further subject to such conditions as are mentioned or referred to in the aforesaid deeds.²⁵

subject to this condition, without qualification. However it is better conveyancing practice to qualify the condition, as it is a reciprocal condition and not exactly the same condition for all the components

²² Only Erf 4 Best Buy is subject to these conditions and they must therefore be qualified to indicate that only the former Erf 4 Best Buy is subject to these conditions. These conditions are indicated on the consolidation diagram and the lettering by which the servitudes are indicated on the consolidation diagram, must be added to the description of the conditions in the certificate of consolidated title.

²³ See the comment in the previous footnote. The principle applies *mutatis mutandis* to Erf 5 Best Buy Township.

²⁴ See the comment in the previous two footnotes. The principle applies *mutatis mutandis* to Erf 6 Best Buy Township.

²⁵ This general conditional clause is not applicable in the deeds registries for Cape Town, Pietermaritzburg, Vryburg and Bloemfontein.

AND THAT by virtue of these presents, the said THE TRUSTEES OF THE JOHN JONES TRUST, their successors in office or assigns, now is and henceforth shall be entitled thereto conformably to local custom, the State, however, reserves its rights.

In witness whereof I, the said Registrar, have subscribed to these presents, and have caused the seal of office to be affixed thereto.

Thus done and executed at the office of the Registrar of Deeds at Johannesburg on this ____ day of _____ .

Registrar of Deeds [50]

NOTE: The way in which the conditions in the Certificate of Consolidated Title should be qualified if you write the examination in Kwazulu Natal is as follows:

1 AS TO THE WHOLE

- A The property is subject to a right of way servitude, now indicated by the figure abcd on attached consolidation diagram S.G. no 35/2012 in favour of Erf 9 Best Buy Township as will more fully appear from Notarial Deed of Servitude K11/2002S with diagram S.G. no 1/2002 annexed thereto.²⁶
- B The property is subject to a Pipeline Servitude, now indicated by the figure klmn on attached consolidation diagram S.G. no 35/2012 in favour of Erf 9 Best Buy Township as will more fully appear from Notarial Deed of Servitude K12/2001S with diagram S.G. no 2293/2001 relating thereto.
- C The property is subject to a right of way servitude, now depicted by the figure rstu on attached consolidation diagram S.G. no 35/2012, for Municipal Purposes in favour of the Local Authority.
- D The property is subject to a garden servitude, now indicated by the figure vwxy on annexed consolidation diagram S.G. no 35/2012, in favour of Erf 12 Best Buy Township as will more fully appear from Notarial Deed of Servitude K13/ 2002S with diagram S.G. no 16/2002 annexed thereto.

²⁶ As there are no grant conditions, the next servitudes that must be reflected as affecting the whole consolidated property, are existing **servitudes** plotted on the consolidation diagram.

- E 1 Subject to the following conditions imposed by and enforceable by the Local Authority: ²⁷
- a) The erf is subject to a servitude two metres wide in favour of the local authority, for sewerage and other municipal purposes, along one only of its boundaries other than a street boundary as determined by the local authority.
 - b) No building or other structure shall be erected within the aforesaid servitude area and no large-rooted trees shall be planted within the area of such servitude or within two metres thereof.
- F The property may not be transferred to any person who has not bound himself/herself to become a member of the Hubby Bubbly Homeowners Association.

2 AS TO THE COMPONENTS REPRESENTED BY THE FIGURES ABGHA, BCFGB and CDEFC ON DIAGRAM SG NO 35/2012, SUBJECT TO THE FOLLOWING CONDITION:

Erven 4, 5 and 6 Best Buy Township have been Notarially Tied and are regarded as one property. The properties may not be alienated, transferred or separately dealt with without the consent of the Local Authority as will more fully appear from Notarial Tie Agreement K844/2004.²⁸

TOTAL: [200]

²⁷ After all the **servitudes** affecting the consolidated property as a whole are set out, the **conditions** registered against all the components with the same creative deed must be set out.

²⁸ Although this condition will become unnecessary as soon as consolidation has taken place, it must be perpetuated in the certificate of consolidated title and the registrar of deeds will endorse the certificate of consolidated title regarding the lapse of the tie condition. The holder of the right must however consent to the issue of the certificate of consolidated title.

Model Answers to the Conveyancing Examination

May 2013

Part 2

Self-Study Deeds Course

Question 1 - Model answer ²⁹ [10]

- 1.1 **Documents to be lodged in the deeds registry -**
- 1 **Title deed(s)** for endorsement
 - 2 **CIPC certificate** regarding conversion
 - 3 **conveyancer certificate** regarding verification of the CIPC certificate [2]
- 1.2 Certified copy of the **registration certificate**
certified copy of the **memorandum of incorporation**
auditor's/accounting officer's certificate
resolution by the shareholders of the company
resolution by the directors of the company [2]
- 1.3 **unanimous resolution by the members** of the close corporation
certified copy of the **founding statement** and amended founding statement of
the CC (if applicable)
usual **accounting officer's report** (including confirmation that there was no
change in membership) [2]
- 1.4 Certified copy of the **constitution of the church**
resolution that complies with the requirements as set out in the constitution [2]
- 1.5 Certified copy of the **will** and accepted by the master
letter of authority issued by the Master of the High court
resolution by the trustees of the trust authorising the transaction and appointing
one of them to sign all the necessary documentation
sworn valuation or other **proof regarding the value** of the property [3]

²⁹ Similar questions were asked in May 2009 (Part 2), Question 2 for 15 marks
and May 2011 (Part 2), Question 1 for 15 marks.

Question 2 - Model answer ³⁰

[10]

2.1 Yes.

- a) If spouses were married in community of property to each other and one of them dies or they get divorced and the surviving spouse or one of the spouses (whichever is applicable) is by law entitled to the ½ share of the deceased spouse or the divorced spouse, the spouse who is entitled to the ½ share may bring an application in terms of section 45(2)(c) of the Deeds Registries Act for the release of the deceased or divorced spouse from all liability under the said bond. Obviously the mortgagee must also consent to this - (Form T is used for this purpose).
- b) If a bond is passed by two or more mortgagors over their respective properties and all the property of one of the two mortgagors are released from the operation of the bond, such mortgagor and his property must be released from the operation of the bond. The co-mortgagor as well as the mortgagee must consent to the release - (section 55(1)). Form MM is used in this regard.
- c) If the whole of the land mortgaged under a mortgaged bond is transferred from one person to another person, and the transferor has not held a personal servitude out for himself, the purchaser may be substituted as the only debtor under the bond in terms of section 57 of the Deeds Registries Act. Form W - application by the new mortgagor and consent by the mortgagee - is used. [5]

2.2 No - (section 3(1)(s) of the Deeds Registries Act). [1]

2.3 Yes, a collateral bond may be registered by the same mortgagor as in the principal bond in favour of the same mortgagee as in the principal bond in respect of the same cause of debt (or part thereof). Prescribed Form KK issued under the Deeds Registries Act iro full title property and AJ issued under the Sectional Titles Act iro sectional title property are used.

A surety bond may also be registered by a third party for the indebtedness of the mortgagor (principal debtor) in favour of the creditor of the principal debtor. Form LL issued under the Deeds Registries Act (for full title property) and Form AK issued under the Sectional Titles Act (for sectional the property) are to be used. [2]

2.4 Yes, a substitutive bond may be registered by the same mortgagor in favour of the same mortgagee for the same cause of debt as in the bond that is simultaneously with the registration of the substitutive bond to be cancelled, which facts must be stated in the causa of the new bond. [2]

³⁰ This question was also asked in May 2011 (Part 2), Question 2 for 10 marks.

Question 3 - Model answer ³¹

[3]

No. If a document is signed outside the Republic of South Africa for use inside the Republic of South Africa, the signature on such documents must be authenticated by the signature and seal of specified persons, depending on the circumstances, as set out in Rule 63 of the High Court Rules, for example if the document is signed in Lesotho, Botswana, Swaziland, Zimbabwe the signature may be authenticated by a notary. Another option is for the South African Embassy in that foreign country to authenticate the signature.

South Africa is a member of the Hague Convention. If the other country in which the document is signed is also a member of the convention, the rules of the said convention may be applied, requiring only an apostille to be attached or annexed as an "allonge" (annexure) to the relevant document.

Question 4 - Model answer

[15]

- 1 Section 25(6) of the Sectional Titles Act provides that if no reservation for an extension of the scheme was made by the developer (as in *casu*), or if such reservation was made and for any reason has lapsed, the right to extend the scheme is vested in the body corporate.
- 2 The right to extend the scheme automatically vests in the body corporate. However, as soon as the body corporate wants to deal with this real right, (in this instance exercise the right by applying for the registration of the amending sectional plan of extension of the scheme), it first has to obtain a certificate of real right of extension (drafted in accordance with prescribed Form R issued under the Sectional Titles Act) issued in its name.
- 3 The consent of all the members of the body corporate and of every holder of a bond over a unit in the scheme must accompany the certificate of real right of extension - (regulation 14(2)).
- 4 The body corporate can only exercise its real right of extension of the scheme after having obtained -
 - a) the written consent of all its members; as well as
 - b) the written consent of the mortgagee of each unit in the scheme.

³¹ This question was also asked in May 2011 (Part 2), Question 3.

- 5 If the body corporate wishes to exercise its real right, it must make application for the registration of the sectional plan of extension of the scheme. This application must be prepared in accordance with Form O.
- 6 Both the obtaining of the title deed in the name of the body corporate of the real right of extension as well as the subsequent exercising of its right, (the registration of the amending sectional plan of extension) and subsequent transfers of units may be done in one batch lodged in the deed office.

7 **Documents to be lodged at the deeds office**

(For the obtaining of the title deed for the real right of extension)

- a) Draft **certificate of real right of extension** (prepared in accordance with Form R)
- b) the **plans** referred to in section 25(2)(a) & (b), namely -
 - i) a plan to scale of the building or buildings (in terms of the body corporate's reservation to extend the scheme) and setting out the particulars required by section 25(2)(a); and
 - ii) a plan to scale showing the manner in which the building or buildings are to be divided into sections
- c) a **schedule** indicating the estimated participation quotas of all the sections in the scheme after such sections have been added to the scheme - (section 25(2)(c))
- d) **particulars of any substantial difference** between the material to be used in the construction of the buildings(s) and those used in the construction of the existing building(s)
- e) a **certificate by the land surveyor or architect** to certify that the plans have been drawn in accordance with the requirements of section 25(2)
- f) **written consent** of all the sectional unit owners in the scheme to the issue of the certificate of real right
- g) **written consent** of all mortgagees of bonds registered over units in the scheme to the issue of the certificate of real right

(For the exercise of the right)

- h) **application** for the registration of the sectional plan of extension (Form O)
- i) two registration copies of the **amending sectional plan of extension**
- j) certificate of real right of extension (already lodged - see (a) above)
- k) any **mortgage bond registered against the certificate of real right** together with
- l) the **consent of the mortgagee** - (drafted in accordance with prescribed Form AM) to -
 - the registration of the extension of the scheme; and
 - the endorsement of such bond to the effect that it is attached to -

- ▶ each section shown on the amending sectional plan of extension and its undivided share in the common property; and
 - ▶ the certificate of real right in respect of the remainder of the right (if applicable)
- m) ***Certificates of registered sectional title*** in respect of each unit - (drafted in accordance with prescribed Form C)

Question 5 - Model answer ³²

[6]

TRANSFER DUTY

There is no difference in the amount of transfer duty payable in respect an acquisition of a property by a company or a trust as purchaser. This is the position since 1995. Before that time a trust has been rated at the same rate as for natural persons. Since 23 February 2011 there is also no distinction between the rates for natural persons and juristic persons or trusts. Thus from a transfer duty perspective, it does not make any difference if my client buys the property in his personal name or in the name of a trust or company.

CAPITAL GAINS

If the property is registered in his personal name and it is his primary residence, the first R2 million of the profit on the sale will be exempt from the payment of capital gains. If the property is not his primary residence, 33,3% of the nett capital gain on the sale of the property must be added to his taxable income for the year in which the gain is made.

If the property is registered in the name of a company or trust, it does not matter whether it is his primary residence or not. The R2 million exemption only applies to primary residences that are registered in the personal name of the tax payer (natural person), who lives in that property. 66,6% of the net gain for the relevant year of assessment must be added to the taxable income of the company or trust respectively.

³² Similar questions were asked in May 2008 (Part 2), Question 3 for 6 marks, May 2009 (Part 2), Question 10 for 6 marks and May 2011 (Part 2), Question 5.

Question 6 - Model answer ³³

[4]

It is permissible to include movable property which is not part of the deceased estate in order to equalise the distribution. No immovable assets may however be included from the outside of the estate to equalise the distribution. The share of the surviving spouse which such surviving spouse acquired because of his/her marriage in community of property to the deceased is also not an asset that may be included in the estate to equalise the distribution.

Question 7 - Model answer ³⁴

[5]

7.1 A trust document is -

- i) a written agreement; or
- ii) a testamentary writing (will); or
- iii) a court order

under which a trust was created.

A document which represents a reduction to writing of an oral agreement by which a trust is created/varied is deemed to be a trust instrument - (s 2) [2]

7.2 A trustee must lodge the trust instrument, in terms of which he was appointed as trustee, with the Master before he assumes control of the trust property. A person who has been nominated the trustee of a trust can only act in his capacity as trustee after he has received a letter of appointment from the Master. [2]

7.3 The trustee will first have to provide security for the due administration of the trust, unless he is exempt from the furnishing of security by an order of the court, or the Master, or the trust instrument. [1]

³³ This question was also asked in May 2011 (Part 2), Question 6, for 4 marks.

³⁴ This question was also asked in May 2011 (Part 2), Question 7, for 6 marks.

- 1 Do a **company search** to ensure that the details of the company that you are going to use in your documentation are correct and make sure that the company is not de-registered, liquidated or placed under judicial management.
- 2 Do a **deeds search** to make sure that a liquidation interdict has not been noted against the company's name.
- 3 Obtain certified copies of the **certificate of incorporation** ³⁶ and **certificate to commence business**.³⁷
- 4 Peruse the **memorandum and articles of association** or the **memorandum of incorporation** to ascertain the are any limitations on the legal powers and capacity of the company. Also check whether the borrowing powers of the directors are not limited.
- 5 Obtain a **resolution** by the directors (or the shareholders, if applicable) of the company wherein the transaction is authorised and one of the directors is authorised to sign all the necessary documentation on behalf of the company.
- 6 Obtain a **company certificate**, signed by the duly authorised director wherein the following is confirmed -
 - a list of the current directors
 - that the company is not de-registered or liquidated and that no application for the liquidation of the company is pending
 - that there is not a contravention of any sections of the companies act or the memorandum and articles of association
- 7 Obtain an **auditors'/accounting officer's certificate**, which also confirms the contents of the company certificate as set out in paragraph 6 above.

³⁵ This question was also asked in May 2011 (Part 2), Question 8 for 10 marks.

³⁶ If the company was incorporated after 1 May 2011, this document will be called the registration certificate.

³⁷ A company that has been incorporated after 1 May 2011 is not issued with a certificate to commence business.

Question 9 - Model answer ³⁸

[4]

- 9.1 He first has to take out a Certificate of Registered Title for his share in the property in terms of section 34 of the Deeds Registries Act, as he is transferring a fraction of this share - (any joint owner holding a share in land under one title deed may not transfer a fraction of this share without first taking out a CRT for his whole share) [2]
- 9.2 He first has to take out a Certificate of Registered title in terms of the provisions of section 34 of the Deeds Registries Act, before a bond can be registered over his undivided share - (joint owners holding a share in terms of one title deed may not mortgage his whole or a fraction of his share unless a CRT for his share has been issued. [2]

Question 10 - Model answer ³⁹

[10]

- 10.1.1 The whole or a part of the land in question has been expropriated. If the whole of the land has been expropriated, I will only be able to transfer the property to the expropriating authority, either in terms of section 16 or in terms of a vesting transfer. If only a portion of the property has been expropriated, I must make sure that the property is transferred subject to the condition of expropriation [2]
- 10.1.2 A certified copy in terms of regulation 68(1) of the Deeds Registries Act, to replace the one that has been lost or destroyed, has been issued in respect of title deed T489/1996. I have to lodge the certified copy when I transfer the property, as it is now regarded as the original title deed of the property. If I have found the original title deed, I cannot lodge same together with the transfer, as this deed is redundant. I must hand it in at the registrar of deeds. [2]

³⁸ This question was also asked in May 2011 (Part 2), Question 9 for 4 marks.

³⁹ A similar question was also asked in May 2011 (Part 2), Question 10 for 10 marks.

- 10.1.3 The property against which this caveat has been noted has been attached by the sheriff in pursuance of a warrant of execution issued by the court. I must make sure that the transferor is the sheriff acting in accordance with the warrant of execution. If the transferor is the registered owner of the property, I will first have to arrange for the upliftment of the attachment interdict. [2]
- 10.1.4 A notarial deed of servitude has been registered over the property in question. I will have to embody this servitude as one of the conditions to which the property is subject in the conditional clause of the new deed of transfer. [2]
- 10.1.5 A contract has been recorded against the relevant property in terms of section 20 of the Alienation of Land Act. I will only be able to transfer the property to the person who is the purchaser in the contract that has been recorded. If I have to transfer it to a different purchaser, the recording of the contract must first be cancelled [2]

Question 11 - Model answer ⁴⁰

[10]

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; ⁴¹
- b) **certificate of registered title** (wherein both Portion 1 of Erf 15 and Portion 1 of Erf 16 are listed);
- c) **subdivisional diagrams** for both portions;

⁴⁰ Also see May 2009 (Part 2) question 11 and May 2011 (Part 2) Question 11.

⁴¹ 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.

- 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**.

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

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.
- c) **transfer duty exemption certificate**

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 ⁴²**[1]**

The other spouse can obtain a court order, as the Matrimonial Property Act provides that the court may, on application by the other spouse, give him leave to enter into a transaction without the required consent, if the court is satisfied that the consent is unreasonably withheld, or in any other case that there is good reason to dispense with such consent.

Question 13 - Model answer ⁴³**[2]**

Yes. The management rules may be amended by the body corporate by means of a unanimous resolution and the conduct rules may be amended by a special resolution by the body corporate.

Question 14 - Model answer ⁴⁴**[1]**

Yes. Such judgement may be recovered from the members of the body corporate pro rata in proportion to their participation quotas - section 47 of the Sectional Titles Act).

Question 15 - Model answer ⁴⁵**[4]**

15.1 The seller has to apply for the recordal of the contract within 90 days from -

- the date of the conclusion of the contract; or
- the date on which the property becomes registrable; or
- 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]

⁴² This question was also asked in May 2011 (Part 2), Question 12 for 1 mark.

⁴³ This question was also asked in May 2011 (Part 2), Question 13 for 2 marks.

⁴⁴ This question was also asked in May 2011 (Part 2), Question 14 for 1 mark.

⁴⁵ A similar question has been asked in May 2009 (Part 2), Question 8, and May 2011 (Part 2) question 15, for 4 marks.

15.2 If the seller has not, within the 90 days referred to in paragraph 15.1 recorded the contract, the purchaser is entitled to, within 14 days after the lapse of the 90 day period, cancel the contract. If he chooses not to cancel, he may at any time after the expiration of the 90 days period, record the contract in the deeds office.

15.3 No person shall by virtue of a deed of alienation relating to an erf or a unit receive any consideration until -

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

15.4 Yes. However the mortgagee of such a mortgage bond is deemed to have consented irrevocably and unconditionally to the discharge of the mortgage bond or the release of the land from the bond, if the purchaser should demand transfer. The bond therefore does not afford much security. [1]

Question 16 - Model answer ⁴⁶ [2]

In terms of section 6 of the Deeds Registries Act, the deed under which the land was held immediately prior to the registration of the deed which is cancelled by a court order, shall be revived to the extent of such cancellation and the registrar shall cancel the relevant endorsement therein evidencing registration of the cancelled deed.

Question 17 - Model answer ⁴⁷ [5]

Documents to be lodged in the deeds registry -

- 1 **Written application in terms of section 68(1)** of the Deeds Registries Act by the registered owner of the land over which the servitude is registered
- 2 **title deed of the land** over which the servitude is registered
- 3 **title deed of the servitude** (if any), if available. If not the registrar shall endorse the deed office copy as to the cancellation.
- 4 **proof of the lapse** of the servitude
- 5 **transfer duty receipt** or **transfer duty exemption certificate**, except if the servitude has served its time.

TOTAL: [100]

⁴⁶ This question was also asked in May 2011 (Part 2), Question 16 for 2 marks

⁴⁷ A similar question has been asked in May 2009 (Part 2), Question 7 and May 2011 (Part 2), question 17, for 5 marks.

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SOURCES

Self-study Deeds Course for Attorneys
The Consolidated Practice Manuals of the Deeds Office of South Africa
Relevant acts, regulations and prescribed forms
Registrar's Conference Resolutions