

# Model Answers to the Conveyancing Examination

## May 2014

### Part 1

#### Self-Study Deeds Course

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#### Question 1 - Model answer <sup>1</sup>

[85]

##### 1.1.1 Description of the parties as they would appear in the application for the issue of a certificate of consolidated title:

We the undersigned,

- 1 Siphiso Nxumalo  
Identity number 550911 5203 08 0  
and  
Nonaindia Nxumalo  
Identity number 590130 0030 00 7  
married in community of property to each other  
and  
Siphiso Nxumalo  
Identity number 550911 5203 08 0  
married in terms of customary law
  
- 2 Irene Ferreira in my capacity as trustee and duly authorised thereto by virtue of a resolution of the trustees of the Irene Trust  
Registration number IT12/2000  
which trustees are duly authorised thereto by virtue of letter of authority issued by the Master of the High Court, Pretoria on 15 April 2000
  
- 3 Joe van den Berg in my capacity as director and duly authorised thereto by virtue of a resolution of ABC (Pty) Ltd  
Registration number 1986/000798/07

[5]

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<sup>1</sup> A similar question was asked as question 1 in September 2010, Part 1.

**Form O**CONVEYANCER  
Erinda Frantzen**Certificate of Consolidated Title**<sup>2</sup>

WHEREAS -

- 1 Siphiso Nxumalo  
Identity number 550911 5203 08 0  
and  
Nonaindia Nxumalo  
Identity number 590130 0030 00 7  
married in community of property to each other  
and  
Siphiso Nxumalo  
Identity number 550911 5203 08 0  
married in terms of customary law
- 2 The trustees of the Irene Trust  
Registration number IT12/2000
- 3 ABC (Pty) Ltd  
Registration number 1986/000798/07

have applied for the issue to them of a Certificate of Consolidated Title under the provisions of Section 40 of the Deeds Registries Act, 1937,

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<sup>2</sup> See **Example 9 D** in Part 4 of Self-Study Deeds Course for Attorneys.

AND WHEREAS they are the registered owner of:

1 Remainder of Portion 8 of the Farm Lunsklip 105  
Registration Division JT, Province of Mpumalanga

2 Portion 36 of the Farm Lunsklip 105  
Registration Division JT, Province of Mpumalanga

Both properties held by Deed of Transfer T10/1993

which have been consolidated into the land hereinafter described.

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

1 Siphiso Nxumalo  
Identity number 550911 5203 08 0  
and  
Nonaindia Nxumalo  
Identity number 590130 0030 00 7  
married in community of property to each other  
and  
Siphiso Nxumalo  
Identity number 550911 5203 08 0  
married in terms of customary law  
their heirs, executors, administrators or assigns

2 The trustees of the Irene Trust  
Registration number IT12/2000  
their successors in office or assigns

3 ABC (Pty) Ltd  
Registration number 1986/000798/07  
its successors in title or assigns

are the registered owners of

Portion 37 of the Farm Lunsklip 105  
Registration Division JT, Province of Mpumalanga  
measuring 75,2163 (seventy five comma two one six three) hectares  
as will appear from diagram S.G. No. A2876/1994 annex hereto

Subject to the following conditions: <sup>3</sup>

- i Not more than one dwelling may be constructed on the property without the written permission of Mark Spark as will more fully appear from Notarial Deed K234/1991.<sup>4</sup>
- ii The former Remainder of Portion 8 of the Farm Lunsklip 105, measuring 72,0000 (seventy two comma nought nought nought nought) hectares,<sup>5</sup> indicated by the figure ABCDEHJKLMNPQRA on consolidation diagram S.G. No. A2876/1994 attached hereto, is subject to the following conditions:<sup>6</sup>
  - 1 a right of way servitude, 6 (six) metres wide, the centre line of which servitude is indicated by the line xy on diagram SG A2876/1994 in favour of the adjacent farm by virtue of Notarial Deed of Servitude No. K593/1986. This right of way servitude has no ancillary rights.<sup>7</sup>
  - 2 A power line servitude, 5 metres wide, in favour of Eskom. The exact route of the servitude has not yet been determined, as will appear from Notarial Deed K60/1985.
- iii) The former Portion 36 of the Farm Lunsklip 105, indicated by the figure FGHF on consolidation diagram S.G. No. A2876/1994 attached hereto, is subject to the following conditions:<sup>8</sup>

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<sup>3</sup> 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.

<sup>4</sup> This condition is the same in respect of all the component properties and therefore the whole consolidated land is made subject thereto, without any qualification.

<sup>5</sup> If the remainder of a property is qualified, the extent of such remainder must be inserted in the qualification sentence.

<sup>6</sup> Only the Remainder of Portion 8 of the Farm Lunsklip is subject to these conditions and servitude and they must therefore be qualified to indicate this.

<sup>7</sup> This servitude is indicated under the heading "servitude note" on the consolidation diagram. The additional information provided regarding this servitude has to be added to the description thereof when this condition is brought forward to the certificate of consolidated title.

<sup>8</sup> The condition and servitude listed under this heading are only applicable to Portion 36 of the Farm Lunsklip and they therefore have to be qualified to indicate this.

- 1 Not more than 20 head of cattle shall be held on the property without the written consent of the owner of Portion 37 of the Farm Lunsklip, or his successors in title, as will more fully appear from Notarial Deed K12/1990.
- 2 The property is entitled to a right of way servitude over Portion 23 of the Farm Morgenson No 3 Registration Division JT, as will more fully appear from Notarial Deed K6/1992.

AND FURTHER subject to such conditions as are mentioned or referred to in the aforesaid deeds.<sup>9</sup>

AND THAT by virtue of these presents, the said Siphiso Nxumalo and Nonaindia Nxumalo (married as aforesaid), their heirs, executors, administrators or assigns, the trustees of the Irene Trust, their successors in office or assigns and ABC (Pty) Ltd, its successors in title 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 Mpumalanga, Nelspruit on this \_\_\_\_ day of \_\_\_\_\_ .

\_\_\_\_\_  
Registrar of Deeds [30]

**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 Subject to a right of way servitude, 6 (six) metres wide, the centre line of which servitude is indicated by the line xy on diagram SG A2876/1994 in favour of the adjacent farm by virtue of Notarial Deed of Servitude No. K593/1986. This right of way servitude has no ancillary rights.<sup>10</sup>

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<sup>9</sup> This general conditional clause is not applicable in the deeds registries for Cape Town, King Williams' Town, Pietermaritzburg, Vryburg and Bloemfontein.

<sup>10</sup> 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.

B Not more than one dwelling may be constructed on the property without the written permission of Mark Spark as will more fully appear from Notarial Deed K234/1991.<sup>11</sup>

2 AS TO THE COMPONENT REPRESENTED BY THE FIGURE ABCDEHJKLMNPQRA ON DIAGRAM SG NO A2876/1994 ATTACHED HERETO, SUBJECT TO THE FOLLOWING CONDITION:<sup>12</sup>

A power line servitude, 5 metres wide, in favour of Eskom. The exact route of the servitude has not yet been determined, as will appear from Notarial Deed K60/1985.

3 AS TO THE COMPONENT REPRESENTED BY THE FIGURE FGHF ON DIAGRAM SG NO A2876/1994 ATTACHED HERETO, SUBJECT TO THE FOLLOWING CONDITIONS:

A Not more than 20 head of cattle shall be held on the property without the written consent of the owner of Portion 37 of the Farm Lunsklip, or his successors in title, as will more fully appear from Notarial Deed K12/1990.

B The property is entitled to a right of way servitude over Portion 23 of the Farm Morgenson No 3 Registration Division JT, as will more fully appear from Notarial Deed K6/1992.

**NOTE: The way in which the conditions in the Certificate of Consolidated Title should be qualified if you write the examination in Cape Town or King William's Town is as follows:**

1 AS REGARDS THE FIGURE ABCDEHJKLMNPQRA ON CONSOLIDATION DIAGRAM SG NO A2876/1994 ATTACHED HERETO, SUBJECT TO THE FOLLOWING CONDITIONS:<sup>13</sup>

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<sup>11</sup> 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.

<sup>12</sup> Servitudes that are not indicated on the consolidation diagram as well as conditions that only affect a particular component property, must be qualified by the addition of an introductory clause indicating that the conditions are only applicable to that component property

<sup>13</sup> Servitudes and conditions that only affect a particular component property, must be qualified by the addition of an introductory clause indicating that the conditions are only applicable to that component property

- A a right of way servitude, 6 (six) metres wide, in favour of the adjacent farm by virtue of Notarial Deed of Servitude No. K593/1986. This right of way servitude has no ancillary rights.<sup>14</sup>

(the centre line of which servitude is depicted by the line xy on diagram SG A2876/1994)

- B A power line servitude, 5 metres wide, in favour of Eskom. The exact route of the servitude has not yet been determined, as will appear from Notarial Deed K60/1985.

2 AS REGARDS THE FIGURE FGHF ON DIAGRAM SG NO A2876/1994 ATTACHED HERETO, SUBJECT TO THE FOLLOWING CONDITIONS:

- A Not more than 20 head of cattle shall be held on the property without the written consent of the owner of Portion 37 of the Farm Lunsklip, or his successors in title, as will more fully appear from Notarial Deed K12/1990.

- B The property is entitled to a right of way servitude over Portion 23 of the Farm Morgenson No 3 Registration Division JT, as will more fully appear from Notarial Deed K6/1992.

3 AS REGARDS THE WHOLE OF THE PROPERTY

- A Not more than one dwelling may be constructed on the property without the written permission of Mark Spark as will more fully appear from Notarial Deed K234/1991.<sup>15</sup>

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

SUBJECT TO THE FOLLOWING CONDITIONS:

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<sup>14</sup> This servitude is indicated under the heading “servitude note” on the consolidation diagram. The additional information provided regarding this servitude has to be added to the description thereof when it is brought forward to the certificate of consolidated title.

<sup>15</sup> As this condition is the same in respect of both component properties, and has the same creative deed, the whole of the consolidated property must be made subject thereto.

- 1 Not more than one dwelling may be constructed on the property without the written permission of Mark Spark as will more fully appear from Notarial Deed K234/1991.<sup>16</sup>
  
- 2 THE COMPONENT INDICATED BY THE FIGURE ABCDEHJKLMNPQRA ON CONSOLIDATION DIAGRAM SG NO A2876/1994 ATTACHED HERETO, IS SUBJECT TO THE FOLLOWING CONDITIONS:<sup>17</sup>
  - A a right of way servitude, 6 (six) metres wide, the centre line of which servitude is indicated by the line xy on diagram SG No A2876/1994, in favour of the adjacent farm by virtue of Notarial Deed of Servitude No. K593/1986. This right of way servitude has no ancillary rights.<sup>18</sup>
  
  - B A power line servitude, 5 metres wide, in favour of Eskom. The exact route of the servitude has not yet been determined, as will appear from Notarial Deed K60/1985.
  
- 3 THE COMPONENT INDICATED BY THE FIGURE FGHF ON DIAGRAM SG NO A2876/1994 ATTACHED HERETO, IS SUBJECT TO THE FOLLOWING CONDITIONS:
  - A Not more than 20 head of cattle shall be held on the property without the written consent of the owner of Portion 37 of the Farm Lunsklip, or his successors in title, as will more fully appear from Notarial Deed K12/1990.
  
  - B The property is entitled to a right of way servitude over Portion 23 of the Farm Morgenson No 3 Registration Division JT, as will more fully appear from Notarial Deed K6/1992.

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<sup>16</sup> As this condition is the same in respect of both component properties, and has the same creative deed, the whole of the consolidated property must be made subject thereto.

<sup>17</sup> Servitudes and conditions that only affect a particular component property, must be qualified by the addition of an introductory clause indicating that the conditions are only applicable to that component property.

<sup>18</sup> This servitude is indicated under the heading "servitude note" on the consolidation diagram. The additional information provided regarding this servitude has to be added to the description thereof when this condition is brought forward to the certificate of consolidated title.



## **Certificate of Registered Title**

[Issued under the provisions of section 43 of the Deeds Registries Act 47 of 1937]

### WHEREAS

- 1 Siphiso Nxumalo  
Identity number 550911 5203 08 0 and  
Nonaindia Nxumalo  
Identity number 590130 0030 00 7  
married in community of property to each other  
and  
Siphiso Nxumalo  
Identity number 550911 5203 08 0  
married in terms of customary law
- 2 The trustees of the Irene Trust  
Registration number IT12/2000
- 3 ABC (Pty) Ltd  
Registration number 1986/000798/07

have applied for the issue to them of a Certificate of Registered Title under section 43 of the Deeds Registries Act, 1937, in respect of the undermentioned land, being portion of the land registered in their name under Certificate of Consolidated Title T25/2006;

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

- 1 Siphiso Nxumalo  
Identity number 550911 5203 08 0 and  
Nonaindia Nxumalo  
Identity number 590130 0030 00 7  
married in community of property to each other  
and  
Siphiso Nxumalo  
Identity number 550911 5203 08 0  
married in terms of customary law  
their heirs, executors, administrators or assigns

- 2 The trustees of the Irene Trust  
Registration number IT12/2000  
their successors in office or assigns

- 3 ABC (Pty) Ltd  
Registration number 1986/000798/07  
its successors in title or assigns

are the registered owners of -

Portion 45 (a Portion of Portion 37) of the Farm Lunsklip 105  
Registration Division JT, Province of Mpumalanga  
Measuring 2,7814 (two comma seven eight one four) hectares

As will appear from annexed diagram S.G. No 2129/2006 and held by  
Certificate of Consolidated Title T25/2006

Subject to the following conditions:

- i Not more than one dwelling may be constructed on the property without the written permission of Mark Spark as will more fully appear from Notarial Deed K234/1991.<sup>19</sup>
- ii The former Portion 36 of the Farm Lunsklip 105, a portion whereof is hereby registered,<sup>20</sup> is subject to the following conditions:<sup>21</sup>

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<sup>19</sup> As this is a condition of a general nature, no qualification is necessary.

<sup>20</sup> As we do not transfer the portion but are taking out a certificate of registered title, the words "a portion whereof is hereby transferred" cannot

- 1 Not more than 20 head of cattle shall be held on the property without the written consent of the owner of Portion 37 of the Farm Lunsklip, or his successors in title, as will more fully appear from Notarial Deed K12/1990.<sup>22</sup>
- 2 The property is entitled to a right of way servitude over Portion 23 of the Farm Morgenson No 3 Registration Division JT, as will more fully appear from Notarial Deed K6/1992.

AND FURTHER subject to such conditions as are mentioned or referred to in the aforesaid deeds.<sup>23</sup>

AND THAT by virtue of these presents, the said Siphiso Nxumalo and Nonaindia Nxumalo (married as aforesaid), their heirs, executors, administrators or assigns, the trustees of the Irene Trust, their successors in office or assigns and ABC (Pty) Ltd, its successors in title 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 Mpumalanga, Nelspruit on this \_\_\_\_ day of \_\_\_\_\_ .

\_\_\_\_\_  
Registrar of Deeds [20]

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be used. The words "a portion whereof is hereby registered" must be used.

<sup>21</sup> The question indicated that the whole of the subdivided portion falls within Portion 36 of the Farm Lunsklip. The conditions applicable to Portion 36 will therefore affect our subdivided portion.

<sup>22</sup> If the property to be subdivided is subject to rights of enjoyment which are numerically restricted, qualification is necessary. Reference to the original property against which this condition was imposed must be referred to in the qualification sentence.

<sup>23</sup> This general conditional clause is not applicable in the deeds registries for Cape Town, King Williams' Town, Pietermaritzburg, Vryburg and Bloemfontein.

## Power of attorney to pass transfer

I, the undersigned

Joe van den Berg in my capacity as director and duly authorised thereto by virtue of a resolution of  
ABC (Pty) Ltd  
Registration number 1986/000798/07

do hereby nominate, constitute and appoint Gabriël Jacobus le Roux and/or Erinda Frantzen with the power of substitution to be my lawful attorney and agent and to appear before the Registrar of Deeds at Mpumalanga, Nelspruit and there and then to declare that the company did on 22 June 2010 sell to

- 1 Siphiso Nxumalo  
Identity number 550911 5203 08 0  
and  
Nonaindia Nxumalo  
Identity number 590130 0030 00 7  
married in community of property to each other  
and  
Siphiso Nxumalo  
Identity number 550911 5203 08 0  
married in terms of customary law
- 2 The trustees of the Irene Trust  
Registration number IT12/2000

for the sum of R3 000 000,00 (three million rand), the following property

1/3 (one third) share in and to  
Portion 45 (a Portion of Portion 37) of the Farm Lunsklip 105  
Registration Division JT, Province of Mpumalanga  
Measuring 2,7814 (two comma seven eight one four) hectares

Held by Certificate of Registered Title T32/2007

Subject to the following condition imposed in clause 12 of the deed of sale dated 22 June 2010 in favour of ABC (Pty) Ltd, Registration number 1986/000798/07:

- i) The within mentioned property may not be sold unless the registered owner has offered the property for sale to the said ABC (Pty) Ltd 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 deed of sale in paragraph (i) above, shall be determined by mutual agreement or failing such mutual agreement, by a sworn appraisement 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 the 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 to transfer the said property to the purchaser and to renounce all the right, title and interest which ABC (Pty) Ltd heretofore had in and to the said property, to do whatsoever shall be necessary as effectively as I do if personally present and hereby promising to ratify and confirm all that my attorney shall lawfully do by virtue hereof.

SIGNED at Nelspruit on 14 May 2014.

As witnesses

1 \_\_\_\_\_

2 \_\_\_\_\_

\_\_\_\_\_ J van den Berg obo ABC (Pty) Ltd [15]

**Form W**CONVEYANCER  
Gabriël Jacobus le Roux**CONSENT TO SUBSTITUTION**Issued under the provisions of section 57 of  
the Deeds Registries Act, 47 of 1937

Whereas

Backbreak Bank Limited  
Registration number 1960/023159/06  
is the legal holder of mortgage bond B19/2007

passed by

- 1 Siphiso Nxumalo  
Identity number 550911 5203 08 0  
and  
Nonaindia Nxumalo  
Identity number 590130 0030 00 7  
married in community of property to each other  
and  
Siphiso Nxumalo  
Identity number 550911 5203 08 0  
married in terms of customary law
- 2 The trustees of the Irene Trust  
Registration number IT12/2000
- 3 ABC (Pty) Ltd  
Registration number 1986/000798/07

for the sum of R10 000 000,00 (ten million rand) plus an additional amount of  
R2 000 000,00 (two million rand)

whereby was hypothecated as a *first* mortgage bond certain

Portion 45 (a Portion of Portion 37) of the Farm Lunsklip 105  
 Registration Division JT, Province of Mpumalanga  
 Measuring 2,7814 (two comma seven eight one four) hectares  
 Held by Certificate of Registered Title T32/2007

And whereas the said ABC (Pty) Ltd has transferred the whole of its 1/3 (one third) share in and to the aforesaid land to

- 1 Siphiso Nxumalo  
 Identity number 550911 5203 08 0  
 and  
 Nonaindia Nxumalo  
 Identity number 590130 0030 00 7  
 married in community of property to each other  
 and  
 Siphiso Nxumalo  
 Identity number 550911 5203 08 0  
 married in terms of customary law
- 2 The trustees of the Irene Trust  
 Registration number IT12/2000

who are ready and willing to take over the liability of the said ABC (Pty) Ltd under the said bond and to be substituted for the said transferor as the debtor under the bond.

Now therefore, I Ben Black in my capacity as director and duly authorised thereto by virtue of a resolution of Backbreak Bank Limited, agree under the provisions of the said Act, that the transferees aforesaid shall be substituted as debtors under the bond and that from the date of execution of the transfer the transferor shall be released from any obligations under the said bond.

Signed at Nelspruit on 14 May 2014.

As witnesses:

1 \_\_\_\_\_

2 \_\_\_\_\_

\_\_\_\_\_  
 Signature of mortgagee

And we,

- 1 Siphiso Nxumalo  
Identity number 550911 5203 08 0 and  
Nonaindia Nxumalo  
Identity number 590130 0030 00 7  
married in community of property to each other  
and  
Siphiso Nxumalo  
Identity number 550911 5203 08 0  
married in terms of customary law
  
- 2 Irene Ferreira in my capacity as trustee and duly authorised thereto by virtue  
of a resolution of the trustees of the  
Irene Trust  
Registration number IT12/2000  
which trustees are duly authorised thereto by virtue of letter of authority  
issued by the Master of the High Court, Pretoria on 15 April 2000

the transferees aforesaid, having read the above consent of the legal holder of the bond do hereby consent to accept transfer of the land subject to such bond and to be substituted for the transferor as debtor thereunder and hereby assume full liability for the indebtedness under the said bond in terms of the provisions of the said Act and renounce the exception *de duobus vel pluribus reis debendi*,<sup>24</sup> with the force and effect of which are are fully familiar with.

Signed at Nelspruit on 14 May 20104.

As witnesses:

- |   |  |                                 |
|---|--|---------------------------------|
| 1 |  |                                 |
|   |  | Siphiso Nxumalo                 |
| 2 |  |                                 |
|   |  | Nonaindia Nxumalo               |
|   |  |                                 |
|   |  | I Ferreira obo Irene Trust [15] |

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<sup>24</sup> Section 57(4)(b) specifically requires that if the property is transferred to two or more persons, they must take transfer of the land in undivided shares and the written consent in terms of section 57(1) must contain the renunciation of the exception *de duobus vel pluribus reis debendi*.



**Question 2 - Model answer** <sup>25</sup>

**[40]**

- 2.1** Transfer duty is payable on the fair value of the immovable property acquired. Thus transfer duty must be calculated in the amount of **R 1 300 000,00** (R1 500 000,00 minus the furniture of R 200 000,00).  
 0% on the first R600 000,00 = R 0,00  
 3% on the next R400 000,00 =R12 000,00  
 5% on the next R300 000,00 = R15 000,00  
**TOTAL TRANSFER DUTY PAYABLE = R27 000,00**

<b>2.2 Seller: Pen Pauper:Final statement of account: sale of Erf 2 Krypton</b>			
By	Purchase price		1 500 000,00
To	Agent's commission	75 000,00	
To	Contribution towards costs	10 000,00	
To	Rates & taxes	6 000,00	
To	Pro rata rates & taxes received from purchaser: 1/5-31/5/2013		1 000,00
By	Occupational rent: Feb 2013		15 000,00
To	Occupational rent: Feb 2013 <sup>26</sup>	15 000,00	
By	Occupational rent: March 2013		15 000,00
To	Occupational rent: March 2013	15 000,00	
By	Occupational rent: April 2013		15 000,00
To	Occupational rent: April 2013	15 000,00	
To	Bond cancellation costs	1 050,00	
To	Paid to McCarthy Motors	90 000,00	
To	Redemption sum to Sleazy Bank	450 000,00	
	<b>Total</b>	<b>677 050,00</b>	
	<b>Due to seller</b>	<b>868 950,00</b>	
	Balances	1 546 000,00	1 546 000,00

<sup>25</sup> Almost the exact same question was asked in September 2010 (Part 1), question 2 for 40 marks and September 2008 (Part 1), question 1 [40].

<sup>26</sup> Your instructions, according to the question, were to pay the seller the occupational rent when due. So at the beginning of every month you had to pay the seller that month's occupational rental and therefore debit him.

<b>Purchaser: Richie Rich</b>			
<b>Final Statement of Account - purchase of Erf 2 Krypton township</b>			
To	Purchase price	1 500 000,00	
By	Bond from Whobbly Bank Limited		1 200 000,00
To	Our transfer fee	12 000,00	
To	VAT on transfer fee	1 680,00	
To	Transfer duty	27 000,00	
To	Our bond registration fee	7 600,00	
To	VAT on our bond registration fee	1 064,00	
To	Deeds office fee for transfer	1 000,00	
To	Deeds office fee for bond registration	500,00	
To	Postage & petties for transfer	307,02	
To	VAT on postage & petties: transfer	42,98	
To	Postage & petties for bond registration	307,02	
To	VAT on postage & petties: bond	42,98	
By	Contribution towards costs by seller		10 000,00
To	Admin fee for clearance certificate	50,00	
To	Pro rata rates & taxes:1/5-31/5/2013	1 000,00	
By	Received iro balance of purchase price, costs, transfer duty and occupational rental		500 000,00
To	Occupational rent: Feb 2013	15 000,00	
To	Occupational rent: March 2013	15 000,00	
To	Occupational rent: April 2013	15 000,00	
By	Interest on investment		7 500,00
	<b>TOTAL</b>	<b>1 597 594,00</b>	
	Amount due to the purchaser	119 906,00	
	Balances	1 717 500,00	1 717 500,00

**Application to record a contract in terms of Section 20 of the  
Alienation of Land Act 68 of 1981**

I, the undersigned

Pieter Uys

Identity number 650115 5879 08 8

unmarried

do hereby make oath and say:

- 1 The hereinafter mentioned land was sold in terms of a contract as defined in the Alienation of Land Act, 1981 (Act 68 of 1981), to the hereinafter mentioned purchaser on 22 June 2013.
- 2 I do hereby make application to the Registrar of Deeds at Pretoria to record the contract against the title deed of the land in terms of Section 20 of the said Act.
- 3 I do hereby confirm that to the best of my knowledge there is no prior contract in force that is required to be recorded against the title deed in question.

**Particulars of land and purchaser**

**The registered owner:** a) Pieter Uys  
Identity number 650115 5879 08 8  
unmarried

**Description of the land** b) Erf 78 Danville Township  
Registration Division J.R., Province of Gauteng  
Measuring 1 000 (one thousand) square metres  
Held by Deed of Transfer T1234/2000

**Purchaser:** c) Hector Winfield  
Identity number 560113 5006 08 2  
Married, which marriage is governed by the laws of  
France

\_\_\_\_\_  
Pieter Uys

<sup>27</sup> This question was asked in September 2010 (Part 1), question 3 for 15 marks.

I certify that the Deponent has acknowledged that he knows and understands the contents of this affidavit which was signed and sworn before me at Pretoria on 14 May 2014.

\_\_\_\_\_  
 Commissioner of Oaths  
 (Full names, address and capacity)

CONTRACT RECORDED ON ..... BY THE REGISTRAR OF  
 DEEDS AT PRETORIA

\_\_\_\_\_  
 REGISTRAR OF DEEDS

### Question 4 - Model answer <sup>28</sup>

[20]

#### 4.1 Documents to be lodged at the deeds registry

- 1 **Application** in terms of section 40(1)(b) of the Administration of Estates Act  
 (Section 40 stipulates that if a trustee has been appointed to administer any property of a deceased person under his will, the executor must deliver such property to the trustees after the liquidation and distribution account has been lodged. "Delivery" is effected by the executor causing the terms of the will to be endorsed against the title deeds and mortgage bonds)
- 2 **Existing mortgage bond B12/2008**  
 (The bond must be lodged for the attachment of the endorsement)
- 3 **Copy of the will**, certified by the Master and endorsed as accepted by him  
 (The deeds registry must ensure that the endorsement is effected in accordance with the terms of the will)
- 4 As the bond is deemed to be movable, **you do not lodge** a section 42(1) of the Administration of Estates Act conveyancer certificate. This certificate must only be lodged in respect of immovable property.

<sup>28</sup> A similar question was asked in May 2012 (Part 1), question 2 for 25 marks.

4.1

Prepared by me

CONVEYANCER  
Gabriël Jacobus le Roux

**Application in terms of section 40(1)(b)**  
of Act No. 66 of 1965

I, the undersigned  
Grant Strong  
in my capacity as the Executor in the Estate of the late Brian Strong  
duly authorised thereto by virtue of letters of Executorship No. 1234/2012  
issued by the Master of the High Court, Durban dated 12 March 2012

hereby apply to the registrar of deeds at Pietermaritzburg for the endorsement of

Mortgage Bond	B12/2008
passed by	Angela Botha Identity number 590103 3020 08 1 widow
in favour of	Brian Strong Identity number 651204 5789 08 7 unmarried
for the sum of	R1 200 000,00 (one million two hundred thousand rand) plus an additional amount of R240 000,00 (two hundred and forty thousand rand)

in terms of section 40(1)(b) of Act No. 66 of 1965 to the effect that the real rights in the said mortgage bond shall be administered on behalf of the beneficiaries by the trustees of the Brian Strong Family Trust appointed in terms of the will dated 11 July 2007 of the said late Brian Strong.

Signed at Durban this 14 May 2014.

---

Grant Strong  
[10]

CONVEYANCER  
Gabriël Jacobus le Roux

### Consent to part payment

I, the undersigned,

Grant Strong in my capacity as trustee<sup>29</sup> of the Brian Strong Family Trust  
Registration number MT124/2012

duly authorised thereto by virtue of letters of authority issued by the Master of  
the High Court, Durban on 23 June 2012

being the legal holder of -

Mortgage Bond  
passed by

B12/2008  
Angela Botha  
Identity number 590103 3020 08 1  
widow

in favour of

Brian Strong  
Identity number 651204 5789 08 7  
unmarried

for the sum of

R1 200 000,00 (one million two hundred thousand  
rand) plus an additional amount of R240 000,00  
(two hundred and forty thousand rand)

do hereby consent to the noting of a part payment being registered against the  
abovementioned bond for the amount of R500 000,00 (five hundred thousand  
rand).

Signed at Durban on 12 November 2014.

As witnesses:

1 \_\_\_\_\_

2 \_\_\_\_\_

\_\_\_\_\_

G Strong obo Brian Strong Family Trust

[10]

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<sup>29</sup> Or if no name was allocated to the trust "trustee" can be followed with "of  
the trust created in terms of the will in the estate of the Late Brian Strong..."

## Question 5 - Model answer

[10]

Be it hereby made known

THAT Erinda Frantzen appeared before me, the Registrar of Deeds at Pretoria, the said appearer, being duly authorised thereto by a power of attorney granted to her by

- 1 Petrus Wessels  
Identity number 481230 5693 08 7  
widower  
(As fiduciary)
  
- 2 Willem Wessels  
Identity number 721201 5369 08 7  
married in community of property to Tiffany Wessels, with the exclusion of the community of property in respect of the undermentioned property as a result of the stipulations contained in the will of the late Anna Wessels dated 3 February 2000  
(As fideicommissary)

dated the 1 st day of May 2014 and signed at Pretoria

AND the said appearer declared that his principals had on 10 February 2014 truly and legally sold the within mentioned property to the hereinafter mentioned transferee

And that she in her capacity aforesaid, did, by these presents, cede and transfer to and on behalf of

Uys Supermarket (Pty) Ltd  
Registration number 1990/032567/07  
its successors in title or assigns

in full and free property...

**The model answers for questions 6 and 7.1 van be found on page 25**

**Power of attorney to pass transfer**

I, the undersigned

Aletta Howard in my capacity as executrix in the estate of  
the late Joseph Howard

Estate number 2368/2012

duly authorised thereto by virtue of letters of executorship issued by the  
Master of the High Court, Cape Town, on 1 July 2012<sup>30</sup>

do hereby nominate, constitute and appoint Gabriël Jacobus le Roux and/or Erinda  
Frantzen with the power of substitution to be my lawful attorney and agent and to  
appear before the Registrar of Deeds at Cape Town and there and then to declare  
that I did on 16 August 2012, with the consent of the Master, truly and legally sell  
the hereinafter mentioned property to

Mary van der Merwe

Identity number 550911 4203 08 0

married out of community of property

for the sum of R1 190 000,00 (one million one hundred and ninety thousand rand),  
the following property

Portion 1 of Erf 160 Witfield

in the City of Cape Town, Cape Division, Province Western Cape

Measuring 1 000 (one thousand square metres)

Held by Deed of Transfer T7536/2000

AND to transfer the said property to the purchaser and to renounce all the right, title  
and interest which the joint estate of the late Joseph Howard, estate number  
2368/2012 and surviving spouse Aletta Howard, previously married in community of  
property to the deceased heretofore had in and to the said property, to do

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<sup>30</sup> Although transfer is effected from a joint deceased estate, only the executor  
signs the power of attorney, as this is one of the exceptions in section 21,  
namely where the surviving spouse has signed the power of attorney as  
executor.



whatsoever shall be necessary as effectively as I do if personally present and hereby promising to ratify and confirm all that my attorney shall lawfully do by virtue hereof.

SIGNED at Cape Town on 14 May 2014.

As witnesses

1 \_\_\_\_\_

2 \_\_\_\_\_

\_\_\_\_\_ A Howard [13]

### **Question 6 - Model answer**

**[15]**

6.1 Erf 50 Bela Bela Extension 60 Township  
Registration Division K.R., Northern Province

Measuring 800 (eight hundred) square metres

As will appear from General Plan S.G. No. 10/2011 and held by Certificate of Township Title T55/2010. [6]

6.2 First transferred and still held by Deed of Transfer T3/2012 with General Plan S.G. No. 10/2011 relating thereto. [6]

6.3.1 The registered owner must apply for the issue to him of a certificate of registered title under the provisions of section 43 of the Deeds Registries Act in respect of the surveyed portion that is to remain registered in his name. [1]

6.3.2 First transferred by Deed of Transfer T3/2012 with General Plan S.G. No. 10/2011 relating thereto and held by Deed of Transfer T22/2013. [2]

### **Question 7 - Model answer (continue)**

**[15]**

7.1 The Master must consent to the transfer. It must be arranged that the Master endorses the power of attorney to transfer in terms of section 42(2) of the Administration of Estates Act wherein he states that he does not have any objection to the within mentioned transfer. [2]

**TOTAL: [200]**

# Model Answers to the Conveyancing Examination

## May 2014

### Part 2

#### Self-Study Deeds Course

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##### Question 1 - Model answer

[4]

Section 18(3) of the Administration of Estates Act *inter alia* provides that the Master must give directions to the representative as to the manner in which the estate must be liquidated and distributed. The letters of authority issued by the Master to a representative in a section 18(3) estate directs such representative to take control of the assets, pay the debt and then transfer the residue of the estate to the heirs entitled thereto by law. This authorisation does not include the sale of assets. Should the Master's representative need to sell the immovable property a further direction which authorises the same needs to be obtained from the Master in terms of section 18(3).

Further, the representative may not proceed with the transfer without the written consent of the Master.<sup>31</sup> This consent is obtained in the same manner as a consent in terms of section 42(2) of the Administration of Estates Act.

##### Question 2 - Model answer

[2]

Section 18(3) provides that if the value of any estate does not exceed the amount determined by the Minister, the Master may dispense with the appointment of an executor and give directions as to the manner in which any such estate shall be liquidated. A representative appointed under section 18(3) who attempts to liquidate and distribute an estate which value is in excess of the determined amount (R125 000) exceeds his/her authority and therefore acts unlawfully. Therefore, if subsequently to a representative's (AB) appointment, the value of the estate, including any immovable property, exceeds R125 000, the representative's appointment automatically becomes invalid. AB must therefore refer the matter back to the Master for revocation of the letter of authority and for the issue of a letter of executorship.

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<sup>31</sup> Registrars' Conference Resolution 46/2008.

### Question 3 - Model answer

[2]

Transfer duty will be payable by the son on the fair value of the property as at date of the donation. Donations tax is payable by the donor. However, there is an exemption in respect of donations tax, which is the value of property donated by a natural person in a year of assessment that does not exceed R100 000,00. Therefore, if the father has not yet made any other donations, the first R100 000,00 value of the property will be exempt from the payment of donations tax.<sup>32</sup> For the remainder of the value of the property, the father is liable to pay donations tax at a rate of 20% on such value.

### Question 4 - Model answer

[5]

Transfer duty is a type of tax levied on the value of any property acquired by any person by way of a transaction or in any other way under the Transfer Duty Act for the benefit of the National Revenue Fund. Section 2 of the Transfer Duty Act makes provision for the imposition of transfer duty on -

- 1 the value of any property acquired by any person by way of a transaction or in any other manner; or
- 2 the amount by which the value of any property is enhanced by the renunciation of an interest in or restriction upon the use or disposal of such property.

“**Property**” means-

- 1 **land and any fixtures thereon**; and also
- 2 **any real right in land**, excluding rights under a mortgage bond or a lease);
- 3 a **share or interest in a residential property company**;
- 4 a **contingent right** to any residential property held by a **trust**.

### Question 5 - Model answer

[8]

#### 5.1 Bare dominium

If a personal servitude is registered over land, the registered owner of such land will be the owner of the bare dominium. In other words, his ownership in the land is restricted by the rights of the servitude holder and the rights that he has in such land will then be called the bare dominium. [2]

#### 5.2 Usufruct

It is a personal servitude which provides the usufructuary with a limited real

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<sup>32</sup> Section 56(2)(b) of the Income Tax Act 58/1962

right to use another person's property as well as to collect and use the fruits (proceeds) thereof, with the duty to eventually return the property to the owner thereof. [2]

### 5.3 **Habitatio** (occupancy or residence)

It entails the right to live in someone else's house. Unlike the case of usus, the occupier may let the house. Habitatio lapses upon the death of the occupier or upon expiry of the period thereof if it was granted for only a specified period. [2]

### 5.4 **Servitude**

A servitude is a right belonging to one person, in the property of another, entitling the former to exercise some right or benefit in the property or to prohibit the latter from exercising one or other of his formal rights of ownership.

## **Question 6 - Model answer** [9]

6.1 This is a personal servitude as it is registered in favour of a person.

#### Personal servitude:

A personal servitude is registered against land in favour of a natural or other person. A personal servitude therefore only has a servient tenement and is enjoyed by the holder thereof in his personal capacity. The real right in a personal servitude attaches to the person. A personal servitude is usually for the lifespan of the holder thereof or for a limited or specified period.

#### Praedial servitude

A praedial servitude is registered over the servient tenement in favour of the dominant tenement. A praedial servitude is thus not a servitude in favour of another person but in favour of another piece of land. The real right in a praedial servitude attaches to the land. There must always be two properties, a dominant and servient tenement. A praedial servitude usually continues in perpetuity. [4]

6.2 John Black can sign an underhand waiver of his right in respect of the property. At a Registrars' Conference it was decided that an underhand waiver of a personal servitude effectively causes it to lapse.<sup>33</sup> The owner of Erf 5 Bloemfontein can therefore sign an application in terms of section 68(1) of the Deeds Registries Act for the noting of the lapse of the condition for

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<sup>33</sup> RCR39/1972 and 29/1990.

lodgement in the deeds office.

**Documents to be lodged in the deeds registry:**

- 1 Application by the owner of the burdened land in terms of section 68(1)
- 2 title deed of Erf 5 Bloemfontein <sup>34</sup>
- 3 proof that the servitude has lapsed (underhand waiver)
- 4 transfer duty receipt or exemption certificate.<sup>35</sup> [5]

**Question 7 - Model answer**

**[10]**

As B is not about to transfer the whole of his undivided share in the unit and cede the whole of his undivided share in the exclusive use area to C, but is only transferring and ceding a fraction of his share in the unit and exclusive use area respectively it is compulsory to first apply for -

- a) the issue of a certificate of registered sectional title in terms of section 15B(5) of the Sectional Title Act for his undivided share in the unit; and
- b) a certificate of real right of exclusive use area for his undivided share in the exclusive use area (section 15B(5)(a)).

Simultaneously with the transfer and cession of the fraction in the unit and exclusive use area respectively, a consent by Ouch Bank must be lodged in prescribed form AM issued under the Sectional Titles Act to the release of the fraction of B's share in the unit and exclusive use area from the operation of its bond.

Although section 15B(5)(b) provides that it shall be compulsory to apply for the issue of a certificate of registered section title (for the fraction of a share in the unit) and certificate of real right (for the fraction of a share in an exclusive use area) when desiring to register a bond over those fractions, that will only be the case where those fractions are held together with other shares of other joint owners by one title deed. When the transfer and cession of the fraction of the share takes place, those fractions will be held by separate title deeds which would enable the registration of the new bond in favour of Knypjou Bank without the need for taking out a certificate of registered sectional title or certificate of real right in terms of section 15B(5).

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<sup>34</sup> Note that you could not have listed the title deed of the servitude, as the servitude does not have a notarial deed whereby it was created. It was created directly in the deed of transfer.

<sup>35</sup> It will only not be required if the servitude has served its time, which is not the case in this instance.

## Documents to be lodged in the deeds registry

- 1 Lodgement cover 1: application for Certificate of Registered Sectional Title
  - 1 **Application** iro section 15B(5) for issue of Certificate of Registered Sectional Title for the share in the unit;
  - 2 **draft Certificate of Registered Sectional Title** for the share in the unit;
  - 3 deed of transfer **ST12/2012**;
  - 4 mortgage bond **SB14/2012**.
  
- 2 Lodgement cover 2: application for Certificate of Real Right
  - 1 Application iro section 15B(5) for the issue of Certificate of Real Right for the share in the exclusive use area;
  - 2 **draft Certificate of Real Right** of exclusive use area for ½ share
  - 3 Certificate of Real Right of Exclusive Use Area **SK14/2012**.
  
- 3 Lodgement cover 3: transfer
  - 1 Draft **deed of transfer** iro fraction of ½ share of B in the unit;
  - 2 **power of attorney** to transfer the fraction of the ½ share of B;
  - 3 **transfer duty receipt** (on which the fractions being transferred and ceded in the unit as well as the in the exclusive use area are reflected);
  - 4 **section 15B(3)(a) conveyancer certificate** in respect of the transfer of the fraction of the share in the unit;
  - 5 **rates clearance certificate** from the municipality in respect of the unit and the exclusive use area.
  
- 4 Lodgement cover 4: cession
  - 1 Notarially executed **notarial deed of cession** of the fraction of ½ share in the exclusive use area.

(The transfer duty and rates clearance iro the exclusive use area have been lodged in number 3 of the batch).
  
- 5 Lodgement cover 3: release<sup>36</sup>
  - 1 **consent by Ouch Bank to the release** of the fraction of the ½ share in the unit and exclusive use area from the operation of the bond.
  
- 6 Lodgement cover 4: new bond
  - 1 **New sectional bond** over the fraction of the ½ share in the unit and exclusive use area in favour of Knypjou Bank.

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<sup>36</sup> In the Cape Town deeds registry, the release will be linked first and thereafter the transfer, cession and other lodgement covers.

## Question 8 - Model answer

[10]

- 8.1 **Approval of the budget of the body corporate:**  
ordinary resolution (by a normal majority) at the annual general meeting is required.<sup>37</sup> [1]
- 8.2 **Authorising the extension of the boundaries of a section:**  
special resolution by the body corporate.<sup>38</sup> [1]
- 8.3 **Adding to, amending or repealing conduct rules:**  
special resolution by the body corporate.<sup>39</sup> [1]
- 8.4 **To authorize a section or exclusive use area to be used for a purpose other than shown on the sectional plan:**  
written consent of all the members.<sup>40</sup> [1]
- 8.5 **To purchase or otherwise acquire land to extend the common property:**  
written consent of all the members.<sup>41</sup> [1]
- 8.6 **Revoking the managing agent's appointment:**  
special resolution.<sup>42</sup> [1]
- 8.7 **Removal of the chairperson:**  
ordinary resolution (by normal majority) of the body corporate at a special meeting.<sup>43</sup> [1]
- 8.8 **Deciding that the body corporate must insure against more than the prescribed risks:**

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<sup>37</sup> Management rules 31(2), 36 and 56.

<sup>38</sup> Section 24(3).

<sup>39</sup> Section 35(2)(b).

<sup>40</sup> Section 44(1)(g).

<sup>41</sup> Section 26(1).

<sup>42</sup> Management Rule 47(iii).

<sup>43</sup> Management Rule 19.

special resolution.<sup>44</sup> [1]

8.9 **Adding to, amending or repealing management rules:**  
unanimous resolution.<sup>45</sup> [1]

8.10 **Directing to body corporate to alienate or let all or part of the common property:**  
unanimous resolution.<sup>46</sup> [1]

## **Question 9 - Model answer** [5]

Although Portion 10 (a portion of portion 5) is not affected by the main servitude, it is affected by the ancillary rights and therefore the servitude has to be brought forward to the draft deed of transfer for Portion 10. The ancillary rights, however, affects the whole property against which the servitude has originally been created (in other words Portion 5 of the Farm Blydepoort) and the servitude will therefore have to be qualified as follows:

“The former Portion 5 of the Farm Blydepoort 123, Registration Division J.R., Province of Gauteng, a portion whereof is hereby transferred, is subject to a power line servitude in favour of Eskom with ancillary rights, as will more fully appear from Notarial Deed K12/1954.”<sup>47</sup>

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<sup>44</sup> Section 37(1)(g) and management rule 29(3).

<sup>45</sup> Section 35(2)(a).

<sup>46</sup> Section 17(1).

<sup>47</sup> This qualification will be valid for deeds registries in the former Transvaal (in other words, **Pretoria, Johannesburg and Nelspruit**) as well as **Kimberley and Pietermaritzburg**.

In the **Cape Town deeds registry**, the condition must also be brought forward to the draft deed of transfer, but reference must only be made to the creative deed of the servitude. The condition will be brought forward as follows:

“Subject to a power line servitude in favour of Eskom with ancillary rights, as will more fully appear from Notarial Deed K12/1954.”



## Question 10 - Model answer

[5]

- 10.1 No, the statement is not correct. Section 67 of the Deeds Registries Act provides that a personal servitude<sup>48</sup> may be reserved directly in the deed of transfer (in other words created in the power of attorney and brought forward to the deed of transfer) if the reservation is in favour of -
- a) the transferor; or
  - b) the transferor and his or her spouse or the survivor of them, if they are married in community of property; or
  - c) the surviving spouse if transfer is passed from the joint estate of spouses who were married in community of property
- [4]
- 10.2 If the fideicommissary heir dies before transfer is effected into his or her name, the fideicommissum lapses and the land is therefore not subject to the fideicommissum anymore. The fiduciary will then become the full owner of the land without any restriction regarding the fideicommissum. [1]

## Question 11 - Model answer

[5]

- 11.1 The holder of a negative personal servitude has no positive right which can be exercised on the land of the owner, but should the owner wish to exercise his rights of ownership, he is subjected to the right of veto created in the restraint, for example the owner may not transfer the land without the prior written consent of the trustees of the Blue Valley Golf and Country Estate Home Owners' Association of which the transferee and his successors in title shall be a member.

According to a proviso to section 65(1) a negative personal servitude may be created directly in the deed of transfer (in other words, it is typed in the power of attorney and from there carried forward to the deed of transfer). However, the person who is entitled to enforce such condition must be mentioned in the condition or must be ascertainable therefrom and such person (in casu the home owners' association) must signify its acceptance of such right. The acceptance by the beneficiary of the condition by the holder thereof must be lodged as an additional supporting document in the deeds registry. [4]

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<sup>48</sup> In RCR17/1974 The Registrars' Conference decided that a condition constituting a fideicommissum may be accorded the status of a personal servitude.

- 11.2 If a negative personal servitude is created in a power of attorney, it falls under the definition of “transaction” in the Transfer Duty Act. The creation of this condition will therefore attract transfer duty and a transfer duty receipt or exemption certificate regarding the acquisition of the condition must be lodged.<sup>49</sup>

[1]

## Question 12 - Model answer

[10]

- 12.1 A **foreign company** is an entity incorporated in another country outside South Africa. This is irrespective of whether it is a profit or non-profit company or whether it carries on business or non-profit activities within South Africa.

When a foreign company carries in business or non-profit activities within South Africa, it qualifies as an **external company** that must be registered as such in South Africa in terms of the Companies Act 71 of 2008. [4]

- 12.2 According to Chief Registrar’s Circular 28/2013 it is uncertain, in terms of section 23(2) read together with section 23(2A), whether a foreign company can acquire immovable property or be a mortgagee without being registered as an external company. A registrars’ conference resolution<sup>50</sup> however provides that a foreign company can acquire property or act as mortgagee, provided the conveyancer provides the registrar of deeds with documentary evidence (for example an auditor’s certificate or affidavit from a director of such foreign company) to the effect that the company need not register as an external company in terms of section 23(2) of the Companies Act. [3]

- 12.3 An external company must be described by referring to its **name and suffix as reflected on its registration certificate** or similar document (an external company registered in South Africa takes on exactly the same name and suffix as its name and suffix with which it is registered abroad), together with the **country of incorporation** being appended to its name and suffix and with the **registration number** allocated to it by the CIPC, for example:  
Blue Mountain (Pty) Ltd (incorporated in Australia)  
Registration number 2014/002359/10

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<sup>49</sup> Registrars’ Conference Resolution 43/2012.

<sup>50</sup> RCR47/2011.

Note: The suffix (Pty) Ltd was allocated by the relevant authority in Australia to the name of the company and will also be reflected on the registration certificate issued by the CIPC. [3]

### Question 13 - Model answer [5]

In addition to complying with any **requirements or conditions contained in the company's memorandum of incorporation** (but despite any provision of a company's memorandum of incorporation to the contrary), the board of directors may only authorise financial assistance if -

- a) the particular provision of financial assistance is in accordance with either -
  - i) an **employee share scheme** that complies with section 97; or
  - ii) a **special resolution of shareholders** adopted within the previous two years approving assistance for the specific recipient or a category of potential recipients in which the specific recipient falls; and
- b) the board of directors is satisfied that-
  - i) immediately after providing the financial assistance, the company could satisfy the **solvency and liquidity test**;
  - ii) **the terms** under which the financial assistance is proposed to be given are **fair and reasonable** to the company.<sup>51</sup>

Financial assistance may, however, not be given to the extent that the company's memorandum of incorporation provides otherwise.

### Question 14 - Model answer [4]

It is not necessary for a company to comply with the requirements of section 112 read together with section 115 where the transaction is -

- a) as a result of a business rescue plan;
- b) between a holding company and its wholly-owned subsidiary;
- c) between two or more wholly-owned subsidiaries of the same holding company; or
- d) between a wholly-owned subsidiary on the one hand and its holding company and one or more wholly-owned subsidiaries of that holding company on the other hand.

---

<sup>51</sup> Section 45 of the Companies Act 71 of 2008.

## Question 15 - Model answer

[9]

- 15.1 An application must be lodged in terms of section 45bis(1)(a) of the Deeds Registries Act for an endorsement in terms whereof Dawn shall be entitled to deal with the property as if she has received formal transfer of Des' share in the property. [2]
- 15.2 The application must be signed by the person who is entitled to the property, in other words, Dawn Lindberg. [1]
- 15.3 **Documents to be lodged in the deeds registry**
- 1 **Application** in terms of section 45bis(1)(a)
  - 2 **existing title deed** whereby the property is held
  - 3 **divorce court order and settlement agreement** (certified by the registrar of the high court or a conveyancer or notary)
  - 4 **transfer duty exemption certificate**
  - 5 **rates clearance certificate** [4]
- 15.4 One possibility is that Dawn and the bank sign an application and consent (drafted in accordance with prescribed Form T) in terms whereof she applies and the bank consents to the release of Des from liability under the bond, that Dawn accepts full liability for indebtedness under the bond and be substituted as debtor under the bond.

If the transfer of the property is however going to be lodged simultaneously with the section 45bis(1)(a), the bond can merely be cancelled (as it has to be cancelled for the transfer to take place)en is it not necessary to comply with section 45(2)(c). [2]

## Question 16 - Model answer

[6]

Section 26(1) of the Alienation of Land Act provides that 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. The portion that has been sold will only be registrable as soon as -

- a) the subdivisional diagram has been drafted by the land surveyor and approved by the Surveyor General; and
- b) the municipality has certified that all the conditions subject to which the subdivision has been approved, have been complied with.

If the deed of sale provides for a deposit to be paid to the seller on date of signature in this particular instance, section 26(1) will be contravened as the erf is not registrable. The seller will be guilty of an offence punishable by a penalty and/or imprisonment.

Section 26(3) however, provides that section 26(1) shall not apply -

- a) if the seller entrusts to a practitioner or an estate agent in his capacity as such a consideration to be kept, for the benefit of the purchaser in terms of that deed of alienation in the trust account of the practitioner or estate agent;  
or
- b) if the seller, before payment, furnishes the purchaser with an irrevocable and unconditional guarantee by a banking institution or a registered insurer in terms of which the said banking institution or insurer undertakes to repay the said amount to the purchaser if the erf or unit is not registrable within the period specified in the said guarantee. You may therefore suggest that a provision be included in the deed of sale in terms whereof the deposit payable on date of signature is to be paid into your trust account to be invested on behalf of the purchaser, at least until such time as the erf becomes registrable or more usually until date of registration of the portion into the name of the purchaser.

### **Question 17 - Model answer**

**[1]**

The cooling off right will also not apply where -

- a) the purchaser and seller have previously entered into a deed of alienation in respect of the same land on essentially the same terms;
- b) the purchaser (or prospective purchaser) has reserved the right to nominate or appoint another person to take over his/her rights and obligations under the contract;
- c) the purchaser is purchasing the land by the exercise of an option which was open for exercise for a period of at least five days.

*(any one of the above)*

**TOTAL: [100]**





Compiled by

**Erinda Frantzen**

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Attorney, Conveyancer and Notary of the High Court of South Africa

and

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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  
SA Deeds Journal