

Model Answers to the Conveyancing Examination

May 2015

Part 1

Self-Study Deeds Course

Question 1 - Model answer ¹

[60]

- 1.1 I would link the application for the registration of the amending sectional plan of extension in respect of the section first in the batch for lodgement in the deeds registry. As the extension of section 1 will diminish the participation quota of the other section (section 2) in the scheme, I will have to ascertain if the deviation in the participation quota of section 1 (which is to be extended) will increase with more than 10% or not. For this purpose I will request a certificate from a land surveyor or architect to confirm whether the percentage deviation exceeds 10% or not. If it does not, I need to lodge this certificate, confirming that the deviation in the participation quota of section is not more than 10% due to the extension, in the deeds office together with the application. If the percentage deviation is more than 10% I will need to obtain the consent of Death Bank (mortgagee of the bond registered over section 2 in the scheme). Section 24 (6A) of the Sectional Titles Act provides for a procedure to be followed in such an instance: A notice must be send per registered post to Death Bank containing certain prescribed information. If a response is not received within 30 days after the posting of such letter, it shall be deemed that the mortgagee does not have any objection to the proposed extension and that the mortgagee consents thereto.

Thereafter the ½ share of the deceased mr Gopaul must be transferred to Mrs Gopaul. The most cost effective way in which this can be done is if I (the executor) and Mrs Gopaul bring an application in terms of section 45(1) of the Deeds Registries Act for the endorsement of the title deed to the effect that Mrs Gopaul shall be entitled to deal with the whole unit as if she has received formal transfer thereof. A substitution of debtor in terms of section

¹ See Question 7 (Part 1) September 2014 for a similar question.

45(2)(i) can thereafter be effected in respect of the existing bond that is registered over the property to the effect that Mrs Gopaul will become the only debtor under the bond.

Transactions to be registered in the deeds office (simuls):

- 1 Application by the executor and Mrs Gopaul for the registration of the amending sectional plan of extension into s 24(6) of the Sectional Titles Act;
- 2 Application by the executor and Mrs Gopaul in terms of section 45(1) of the Deeds Registries Act for an endorsement;
- 3 Application and consent by Mrs Gopaul and consent by the bank into s 45(2)(c) of the Deeds Registries Act to the substitution of Mrs Gopaul as the only debtor under the bond.

Question 3.3 - Model answer

[6]

3.3 Documents to be lodged at the deeds registry

- 1 Draft **deed of transfer** for Portion 1 of Erf 36 Green Point
- 2 **Power of attorney** to pass transfer
- 3 **Transfer duty** receipt or exemption certificate
- 4 **Rates clearance** certificate by local authority
- 5 Copy of the **unanimous resolution** by the body corporate, certified by two trustees
- 6 **Consent to subdivision** by local authority including conditions of subdivision
- 7 **Certificate by local authority** confirming that all the conditions of subdivision have been complied with
- 8 One certified copy of the **subdivisional and parent diagram**
- 9 **Bond(s) over any of the units** and **bondholder's consents** to the release of the portion of the common property from the operation of the bond(s).

The rest of the model answer to question 3 follows chronologically hereunder
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FORM O**Application under section 24(6)²**
of the Sectional Titles Act, 1986

We, the undersigned

- 1 Erinda Frantzen, in my capacity as executor in the estate of the late Srinivasan Gopaul, duly authorised thereto by virtue of Letters of Executorship 2368/2014 issued by the Master of the High Court at Pretoria on 9 September 2014
and
- 2 Nierisa Gopaul
Identity number 720717 0246 08 0
widow, in my personal capacity as surviving spouse of the deceased to whom I was married in community of property

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

- 1 The registration of the attached (amending) sectional plan of extension of a section (S.G. D855/2014) in terms of the provisions of section 24(6) of the Sectional Titles Act, 1986, in respect of section number 1 as shown and more fully described on sectional plan no. SS638/1995³ in the scheme known as **ERF 1632** in respect of the land and building or buildings situate at ERF 1632 ZWARTKOP EXTENSION 8 TOWNSHIP, LOCAL AUTHORITY: CITY OF TSHWANE METROPOLITAN MUNICIPALITY and held under Deed of Transfer ST75390/2012.

Signed at Pretoria on 13 May 2015

Executor

N Gopaul

² Form O to the Sectional Titles Act is used.

³ Reference must here be made to the sectional plan on which section 1 is indicated before the extension is registered.

Application for Endorsement

in terms of Section 45(1) of the Deeds Registries Act, 47 of 1937

We, the undersigned

- 1 Erinda Frantzen, in my capacity as executor in the estate of the late Srinivasan Gopaul, duly authorised thereto by virtue of Letters of Executorship 2368/2014 issued by the Master of the High Court at Pretoria on 9 September 2014
and
- 2 Nierisa Gopaul
Identity number 720717 0246 08 0
widow, in my personal capacity as surviving spouse of the deceased to whom I was married in community of property ⁴

do hereby apply in terms of section 45(1) of the Deeds Registries Act, 47 of 1937, to the Registrar of Deeds at Pretoria for endorsing the Deed of Transfer ST75390/2012 holding -

A unit consisting of

- a) Section No 1 as shown and more fully described on Sectional Plan No SS to be registered ⁵ in the scheme known as ERF1632 in respect of the land and building or buildings situate at ERF1632 ZWARTKOP EXTENSION 8 TOWNSHIP, LOCAL AUTHORITY: CITY OF TSHWANE METROPOLITAN MUNICIPALITY, of which section the floor area, according to the said

⁴ Both the executor and the surviving spouse must sign the application, except where the surviving spouse and the executor is the same person.

⁵ When the sectional plan of extension SG D 855/2014 is registered, the deeds registry will allocate a "SS" thereto. In any subsequent transactions, reference to this new "SS -number" must be made in the description of the unit. As the registration of the sectional plan of extension is taking place simultaneously with the section 45(1) application you would not know what this number is when you draft this application. As the application is not a deed, you cannot leave the number open and will insert the following word: "to be registered".

sectional plan is 264 (two six four) ⁶ 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

to the effect that the surviving spouse, Nierisa Gopaul, is entitled to the above-mentioned property, one-half share by virtue of her marriage in community of property to the late Srinivasan Gopaul and one-half share by virtue of the will signed at Durban on 11 September 2011 of the late Srinivasan Gopaul, who died on 9 August 2014, as she has taken formal transfer of the share of the deceased spouse.

We hereby declare that the value of the ½ share being transferred is R600 000,00.

Signed at Pretoria on this 13th day of May 2015

N Gopaul

Executor

⁶ As the extension of the section has been linked first, the extent of the section (after extension) must be used here. This extent can be found on participation quota sheet of the amending section plan of extension SG D855/2014.

1.3 Additional documents to be lodged at the deeds registry

a) Application for registration of amending sectional plan of extension

- 1 amending **sectional plan of extension** SG D 855/2014 in duplicate
- 2 **existing title deed** ST75390/2012
- 3 **existing mortgage bond** SB45062/2012 for endorsement
- 4 **conveyancer certificate** to confirm that the consent of all the mortgagees in the scheme have been obtained ⁸
- 5 **transfer duty receipt**

b) Application in terms of section 45(1)

- 1 **transfer duty exemption certificate**
- 2 **rates clearance certificate**
- 3 **copy of the will**, certified by the Master and endorsed as accepted by him
- 4 **section 42(1)** conveyancer certificate

(Note that the current title deed ST75390/2012 has already been lodged in nr 1 of the batch)

c) Application and consent to section 45(2)(c):

(Note that the bond that would have to be lodged together with the application and consent has already been lodged in nr 1 of the batch)

⁸ Without making any calculation, it is clear that the percentage deviation in the participation quota of Section 1 is more than 10% taking into account that there are only 2 sections in the scheme and that the extent of part 1 has been increased with more than 2 and a half times.

The deviation in the participation quota could also have been calculated as follows:

Before the extension the participation quotas of the sections were as follows:

Section nr	Floor area	Participation quota
1	100	42,0168
<u>2</u>	<u>138</u>	<u>57,9832</u>
Totaal	238	100,0000

Deviation in the participation quota of section 1:

$$65,6716 - 42,0168 = 23,6548$$

Deviation expressed as a percentage:

$$\frac{23,6548 \times 1}{42,0168 \times 100}$$

$$= 56,29\%$$

Purchaser: Deon Ford			
Pro forma statement of Account - purchase of Unit 5 Maxwell Court			
To	Purchase price	2 800 000,00	
Received	deposit		560 000,00
Received	guarantees for purchase price		2 000 000,00
To	transfer costs	30 842,60	
To	Transfer duty ¹⁰	141 000,00	
Received	received iro transfer duty		141 000,00
To	Pro rata rates & taxes:1/02/2015-30/04/2015	7 200,00	
To	Pro rata levies: 1/02/2015-30/04/2015	7 500,00	
To	Occupational rent: 1/02/2015-28/02/2015	30 000,00	
To	Occupational rent: 1/03/2015-31/03/2015	30 000,00	
To	Occupational rent: 1/04/2015-30/04/2015	30 000,00	
	TOTAL	3 076 542,60	
	Amount due by the purchaser		375 542,60
	Balances	2 701 000,00	2 701 000,00

Amount due by the Purchaser

R 375 542,60

⁹ See Question 2 (Part 1) September 2011 for 15 marks for a similar question.

¹⁰ The transfer duty is calculated as follows (date of transaction - 12/10/2014):

0% on the first R600 000,00	= R 0,00
3% on the next R400 000,00	=R 12 000,00
5% on the next R500 000,00	= R 25 000,00
8% on R1 300 000,00	=R 104 000,00
TOTAL TRANSFER DUTY PAYABLE	= <u>R141 000,00</u>

Power of Attorney to Pass Transfer

We, the undersigned,
John Jackson and Martin Poe,
in our capacities as TRUSTEES OF THE BODY CORPORATE IN THE SCHEME
KNOWN AS JOLENE Number SS27/2011, and duly authorized thereto by virtue of
a unanimous resolution dated 6 March 2015,

hereby nominate constitute and appoint Gabriël Jacobus le Roux, with power of
substitution to be our true and lawful agent and to appear before the Registrar of
Deeds at Pretoria and then and there as our act and deed to declare that -

WHEREAS buildings on Erf 36 Green Point encroach on Erf 35 Green Point and
buildings on Erf 35 Green Point encroach on Erf 36 Green Point;

AND WHEREAS the Body Corporate of the Scheme known as Jolene SS27/2011
and the transferee have on 10 March 2015 agreed to subdivide their properties and
that the Body Corporate of the Scheme Jolene No SS.25/2011 will transfer to the
undermentioned transferee the undermentioned property in exchange for Portion 1
of Erf 35 Green Point, Measuring: 120 (one hundred and twenty) square metres
and that no consideration will be payable in respect of the exchange;

AND to hereby cede and transfer to -

PETER NKOSI

Identity number: 590127 5151 08 3 and

MARIA NKOSI

Identity number: 610101 0032 08 7

married in community of property to each other

and

PETER NKOSI

Identity number: 590127 5151 08 3

married in terms of customary law

¹¹ A similar question was asked in September 2011, Question 4 (Part 1) for 30 marks and in September 1997, Question 1 (Part 1) for 30 marks. See **Example 5D in Part 4** of the Self-Study Deeds Course Notes.

the following property -

Portion 1 of Erf 36 Green Point Township
 Registration Division I.Q. Province Gauteng
 Measuring: 120 (one hundred and twenty two) square metres
 Held by Deed of Transfer T3684/2009 ¹²

AND to renounce all right title and interest which the said Body Corporate of the scheme known as Jolene and all it's members heretofore had in and to the said property and to free the said property from all encumbrances and hypothecation according to the law.

Signed at Pretoria this 13th day of May 2014

Witnesses	1 _____	_____	
		TRANSFeree	
	2 _____	_____	
		TRANSFEROR	[18]

3.2 As will appear from annexed diagram SG Nr 2358/2015 ¹³ and held by Deed of Transfer T3684/2009 ¹⁴

3.3 The answer to this question can be found on page 2 baove.

¹² This is the title deed whereby the full title property was held at the time when the sectional title register was opened.

¹³ You had to make up your own information. Note that you will have to obtain a subdivisional diagram for the portion of the common property that is to be transferred. This diagram will provide this portion with a full title property description. As this would be the first transfer of Portion 1, form TT must be utilised.

¹⁴ This is the title deed whereby the full title property was held at the time when the sectional title register was opened.

Prepared by me

CONVEYANCER
Gabriël Jacobus le Roux

Power of Attorney to Pass Transfer

We, the undersigned,

1 JOHN TOPPER

in my capacity as Executor in the estate of the late Raymond Louis Lombard, acting under letters of Executorship Number 4053/2009 issued by the Master of the High Court at Cape Town on 26 August 2009
and

2 JOYCE ELIZABETH LOMBARD

Identity Number 560808 0243 08 0
widow

in my personal capacity as surviving spouse of the late Raymond Louis Lombard to whom I was married in community of property

do hereby appoint Gabriël Jacobus le Roux and/or Herschelle Gibbs with power of substitution to be our Agent(s) to appear at the office of the Registrar of Deeds at CAPE TOWN or elsewhere

AND to declare on my behalf that -

1 WHEREAS the said JOYCE ELIZABETH LOMBARD, Identity Number 560808 0243, who was married in community of property to the said Raymond Louis Lombard, who died on 25 April 2009, is, as his surviving spouse, entitled to a one-half share in the undermentioned property by virtue of her marriage in community of property to the deceased;

2 AND WHEREAS in terms of clause 1 of the joint last will and testament dated 6 January 2000 of the late Raymond Louis Lombard and his surviving spouse JOYCE ELIZABETH LOMBARD, their son, IVAN VICTOR LOMBARD was appointed as heir to the estate of the first dying, subject to the condition contained in clause 3 thereof relating to the exclusion of community of property;

¹⁵ A similar question was asked in Question 4 (Part 1) September 2011 for 20 marks and in Question 12 (Part 1) May 1999 for 20 marks. Also see **Example 5E** in Part 4 of the Self-study Deeds Course for Attorneys.

- 3 AND WHEREAS the said son and surviving spouse entered into a redistribution agreement on 3 March 2015 in respect of the immovable property in the estate, in terms whereof the undermentioned transferee is entitled to the undermentioned property subject to a *usufruct* in favour of the surviving spouse.

NOW THEREFORE and then and there as our act and deed, to pass transfer to
 IVAN VICTOR LOMBARD
 Identity Number 790106 5053 08 2
 married in community of property to JOAN LENA LOMBARD, with the exclusion of the community of property in respect of the undermentioned property as a result of the stipulations contained in the joint will of the late Raymond Louis Lombard and Joyce Elizabeth Lombard dated 6 January 2000

of the following property -

ERF 35693 Cape View

Administrative district of Cape View, Western Cape Province

In extent: 1 980 (one thousand nine hundred and eighty) square metres

HELD BY Deed of Transfer T21518/1985

SUBJECT to the following conditions contained in the said will -

- 1 "Any benefit acquired in terms of my Will shall remain the property of the beneficiary concerned and be excluded from any community of property or community of profit and loss and shall be free from the marital power which might apply to any marriage."
- 2 Subject to the life *usufruct* in favour of
 JOYCE ELIZABETH LOMBARD
 Identity Number 560808 0243 08 0
 Widow

Executed at Cape Town on the 13th day of May 2015, in the presence of the undersigned witnesses.

As witnesses: 1 _____

_____ J TOPPER

2 _____

_____ JE LOMBARD

Power of Attorney to Pass Transfer

We, the undersigned

JOHN JACKSON

in my capacity as nominee of Best Bank Limited, registration number 1960/112233/06 and LEE-ANNE FORTUIN

in our capacities as co-executors in the estate of the Late MARIAAN PATTISON, Estate number 982/2008, and duly appointed by virtue of Letters of Executorship issued by the Master of the High Court at Pretoria on 20 July 2008

do hereby nominate, authorise and appoint Gabriël Jacobus le Roux or Herman Ramutloa with power of substitution to be our true and lawful agent to appear before the Registrar of Deeds at Pretoria and then and there as our act and deed, to declare that:

WHEREAS MARIAAN PATTISON died on 8 May 2008

AND WHEREAS in terms of the Last Will and Testament, dated 24th October 2006, of the said late MARIAAN PATTISON the within-mentioned Transferees are entitled to the undermentioned property TOGETHER WITH an exclusive use area, described as carport CPT8,¹⁷ held under Notarial Deed of Cession SK345/1988S, subject to the condition mentioned below, and to pass transfer to:

¹⁶ A similar question was asked in Question 5 (Part 1) September 2011 for 25 marks and Question 6 (Part 1) September 1998 for 24 marks. Also see **Example 5F** in the Self-Study notes for Attorneys.

¹⁷ The exclusive use area, described as CPT8 for use as a carport, shall be transferred by the registration of a notarial deed of cession entered into by the parties - (section 27(4) of the Sectional Titles Act). That is why only reference is made to the exclusive use area in this power of attorney and it is not recited in full.

- 1 LEE-ANNE FORTUIN
Identity Number 781010 0093 001
married out of community of property
- 2 PATRICIA PATTINSON
Identity Number 730918 0039 089
unmarried
- 3 VIVIENNE HARTLEY
Identity Number 761204 0481 08 5
married in community of property to PETER HARTLEY which community of property has been excluded in terms of a stipulation in the will of the late MARIAAN PATTISON, dated 24 October 2006

OF the following property:

A unit consisting of:

- a) Section No 11 as shown and more fully described on Sectional Plan No SS273/1988 in the scheme known as OAKWOOD in respect of the land and building or buildings situate at ARCADIA TOWNSHIP, City of Tshwane Metropolitan Municipality, of which section the floor area, according to the said Sectional Plan is 215 (two hundred and fifteen) square metres in extent; and
- b) an undivided share in the common property in the scheme apportioned to the said section in accordance with the participation quota as endorsed on the said sectional plan.

HELD BY Certificate of Registered Sectional Title ST273/1988(11)(UNIT).¹⁸

SUBJECT to the following condition contained in the aforesaid Last Will and Testament dated 24 October 2006 of the late MARIAAN PATTISON, reading as follows:

"The inheritance of my heirs shall not form part of the community of property of a present or future marriage."

¹⁸ This is a typical description of the **title deed** of a section transferred before 1992, or also from the developer to the first owner thereof, namely "**Held by Certificate of Registered Sectional Title No ST73/1988(11)(UNIT)**" - (The number of the unit appears behind the number of the CRST). For any further transfers of the section the extending clause shall, for example, be described as: "**Held by Deed of Transfer ST200/1995.**"

AND FURTHER to cede and transfer the said property in full and free property to the said transferees and to renounce all the right title and interest *which the estate of the late MARIAAN PATTISON heretofore had in and to the said property*,¹⁹ and to do whatsoever shall be necessary as effectively as we could do if personally present and hereby promising to ratify and confirm all that our Agent shall lawfully do by virtue hereof.

Signed at Pretoria this 13th day of May 2015

Witnesses:

1 _____

 JOHN JACKSON : Co-executor

2 _____

 LEE-ANN FORTUIN : Co-executor [15]

5.2 Documents to be lodged in the deeds office

- 1) Draft **deed of transfer**
- 2) **Power of Attorney** to pass transfer
- 3) Existing **Title Deeds** to the property and exclusive use area.
- 4) **Transfer duty exemption certificate** in respect of the unit and exclusive use area
- 5) **Conveyancer's Certificate in terms of Section 15B(3)(a)** of Sectional Titles Act, 95 of 1986
- 6) **Clearance certificate** issued by the local authority for the unit and exclusive use area
- 7) **Conveyancers Certificate in terms of Section 42(1)** of Administration of Estates Act, 66 of 1965
- 8) Certified **copy of the will** (certified by the Master and endorsed as accepted by him)
- 9) Certified **copy of the affidavit of next-of-kin** (certified by the Master), to prove heirs in view of the fact that the children are not named in the will
- 10) Existing **mortgage bond**, if property was mortgaged, must be lodged for disposal together with consents to cancellation or release, etc.
- 11) **Notarial Cession** to cede exclusive use area CPT8 to heirs. [10]

¹⁹ The phrase in italics is necessary to divest the deceased estate from the property.

6.1
Form O

Prepared by me

CONVEYANCER
Erinda Frantzen

Certificate of Consolidated Title

WHEREAS -

Ashley Appleton
Identity number 550911 0203 08 0
unmarried

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

AND WHEREAS she is the registered owner of:

- 1 The Farm Hope 105
Registration Division JT, Province of Mpumalanga

Held by Deed of Transfer T5345/2000

²⁰ A similar question was asked in Question 2 (Part 1) September 1999. Also see **Example 9E** in Part 4 of the Self-Study Deeds Course for Attorneys.

- 2 The Farm Berlin 106
Registration Division JT, Province of Mpumalanga

Held by Deed of Transfer T7569/1997

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

Ashley Appleton
Identity number 550911 0203 08 0
unmarried
her heirs, executors, administrators or assigns

is the registered owner of
The Farm Ross 107
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. 2876/2015 annex hereto.

Subject to the following conditions: ²¹

- 1 The former farm Hope 105, depicted by the figure AB EF on the said diagram S.G. No 2876/2015 attached hereto, is subject to a servitude in favour of Eskom to convey electricity over the property as will appear from Notarial Deed K432/1987 S.
- 2 The former farm Berlin 106, depicted by the figure BCDE on the said diagram S.G. No 2876/2015 attached hereto, is subject to the following condition:
Subject to a life usufruct in favour of -
Elizabeth Smith
Identity number 360506 0042 08 1
widow

²¹ 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.

AND FURTHER subject to such conditions as are mentioned or referred to in the aforesaid deeds.²²

AND THAT by virtue of these presents, the said Ashley Appleton (married as aforesaid), her heirs, executors, administrators 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

Comment on condition 1 of the farm Hope:

Condition 1 only applies to the farm Hope and must be qualified to make that fact clear.

Comment on condition 2 of the farm Hope and condition 3 of the farm Berlin:

The condition relating to the servitude of aqueduct has lapsed by merger and must be omitted from the C.C.T. The Registrar must informally be requested to endorse the two existing title deeds accordingly.

Comment on condition 1 of the farm Berlin

Condition 1 relating to mineral rights must be omitted *in toto* - CRC2/2011.

Comment on condition 2 of the farm Berlin

Condition 2 only applies to the farm Berlin and must be qualified to make that fact clear.

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

²² This general conditional clause is not applicable in the deeds registries for Cape Town, King Williams' Town, Pietermaritzburg, Vryburg and Bloemfontein.

follows:

- 1 AS TO THE COMPONENT REPRESENTED BY THE FIGURE AB EF ON DIAGRAM SG 2876/2015 ATTACHED HERETO, SUBJECT TO THE FOLLOWING CONDITION:²³

Subject to a servitude in favour of Eskom to convey electricity over the property as will appear from Notarial Deed K432/1987 S.

- 2 AS TO THE COMPONENT REPRESENTED BY THE FIGURE BCDE ON DIAGRAM SG 2876/2015 ATTACHED HERETO, SUBJECT TO THE FOLLOWING CONDITIONS:

Subject to a life usufruct in favour of -
Elizabeth Smith
Identity number 360506 0042 08 1
widow

Comment on condition 1 of the farm Hope:

Condition 1 only applies to the farm Hope and as this servitude is not indicated on the consolidation diagram, it must be inserted under the qualification for the component comprising the farm Hope.²⁴

Comment on condition 2 of the farm Hope and condition 3 of the farm Berlin:

The condition relating to the servitude of aquaeduct has lapsed by merger and must be omitted from the C.C.T. The Registrar must informally be requested to endorse the two existing title deeds accordingly.

Comment on condition 1 of the farm Berlin

Condition 1 relating to mineral rights must be omitted *in toto* - CRC2/2011.

Comment on condition 2 of the farm Berlin

Condition 2 only applies to the farm Berlin and must be qualified to make that fact clear.

²³ 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.

²⁴ If it were indicated on the consolidation diagram, the whole of the consolidated property had to be made subject thereto, without any qualification.

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 AB EF ON CONSOLIDATION DIAGRAM SG NO 2876/2015 ATTACHED HERETO, SUBJECT TO THE FOLLOWING CONDITION:²⁵
a servitude in favour of Eskom to convey electricity over the property as will appear from Notarial Deed K432/1987 S.
- 2 AS REGARDS THE FIGURE BCDE ON DIAGRAM SG 2876/2015 ATTACHED HERETO, SUBJECT TO THE FOLLOWING CONDITION:
Subject to a life usufruct in favour of -
Elizabeth Smith
Identity number 360506 0042 08 1
widow
- 3 NOT SUBJECT to condition 1 on page 2 of Deed of Transfer T7569/1997, by virtue of Section 53 of the Mining Titles Registration Amendment Act 24 of 2003.

Comment on condition 1 of the farm Hope:

Condition 1 only applies to the farm Hope and must be qualified to make that fact clear.

Comment on condition 2 of the farm Hope and condition 3 of the farm Berlin:

The condition relating to the servitude of aquaeduct has lapsed by merger and must be omitted from the C.C.T. The Registrar must informally be requested to endorse the two existing title deeds accordingly.

Comment on condition 1 of the farm Berlin

As condition 1 relates to mineral rights, a "not subject" condition must be created in the certificate of consolidated title.

Comment on condition 2 of the farm Berlin

Condition 2 only applies to the farm Berlin and must be qualified to make that fact clear.

²⁵ 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.

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:

- 1 THE COMPONENT INDICATED BY THE FIGURE AB EF ON CONSOLIDATION DIAGRAM SG NO 2876/2015 ATTACHED ATTACHED HERETO, IS SUBJECT TO THE FOLLOWING CONDITION:²⁶
a servitude in favour of Eskom to convey electricity over the property as will appear from Notarial Deed K432/1987 S.

- 2 THE COMPONENT INDICATED BY THE FIGURE BCDE ON DIAGRAM SG 2876/2015 ATTACHED HERETO, IS SUBJECT TO THE FOLLOWING CONDITION:
Subject to a life usufruct in favour of -
Elizabeth Smith
Identity number 360506 0042 08 1
widow

Comment on condition 1 of the farm Hope:

Condition 1 only applies to the farm Hope and must be qualified to make that fact clear.

Comment on condition 2 of the farm Hope and condition 3 of the farm Berlin:

The condition relating to the servitude of aquaeduct has lapsed by merger and must be omitted from the C.C.T. The Registrar must be requested to endorse the two existing title deeds accordingly.

Comment on condition 1 of the farm Berlin

Condition 1 relating to mineral rights must be omitted *in toto* - CRC2/2011.

Comment on condition 2 of the farm Berlin

Condition 2 only apply to the farm Berlin and must be qualified to make that fact clear.

²⁶ 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.

- 6.2 The usufructuary's consent is not required as her rights are not affected in any manner. [2]
- 6.3 Section 40(5)(b) of the Deeds Registries Act provides that where properties that are to be consolidated are subject to different bonds, such bonds must be cancelled. In this instance it will only be necessary to cancel one of the bonds in accordance with section 40(5)(b). Prescribed Form MM is to be used for the consent by the bank to cancellation.

Thereafter the provisions of section 40(5)(a) can be applied in respect of the other bond. Section 40(5)(a) provides that where only a portion of the land to be consolidated is subject to a bond, all the land to be consolidated can be mortgaged by that bond in lieu of only that portion. This procedure requires an application and consent by the registered owner as well as a consent by the mortgagee concerned, to be drafted in accordance with prescribed Form WW issued under the Deeds Registries Act.

After consolidation a new bond, ranking as a second bond, can be registered over the consolidated property to replace the bond that was cancelled, if required by your client.

Alternatively, both bonds can just be cancelled, if that is in accordance with you client's instruction.

7.1

Prepared by me

Form H

CONVEYANCER
Gabriël Jacobus le Roux

(Leave first half of this page blank!)

Deed of Transfer

[by virtue of section 33 of the Deeds Registries Act, 1937 (No. 47 of 1937)]

Be it hereby made known:

That in obedience of an Order of the High Court of South Africa Eastern Cape Division, Grahamstown on 12 December 2010, I, the Registrar of Deeds at King Williams Town by virtue thereof, cede and transfer in full and free property to and on behalf of

Alfred Scott

Identity number 501214 5487 08 4

and

Doris Day

Identity number 601219 0008 08 2

married in community of property to each other

their heirs, executors, administrators or assigns certain

1 Erf 56 East London

Local Municipality of Buffalo City, Division East London, Province Eastern Cape

measuring 360 (three hundred and sixty) square metres

First transferred by Deed of Transfer T167/1932 with general plan S.G. no. 4879/1932 relating thereto and held by Deed of Transfer T1258/1969

Subject to the following conditions:

(Insert all the conditions of title as you would usually do, except if the court order provides to the contrary)

²⁷ A similar question was asked in Question 7 (Part 1) September 2011 for 10 marks. See **Example 15C** in Part 4 of the Self-Study Deeds Course for Attorneys.

- 2 Erf 57 East London
Local Municipality of Buffalo City, Division East London, Province Eastern Cape
measuring 360 (three hundred and sixty) square metres

First transferred by Deed of Transfer T1597/1932 with general plan S.G. No. 4879/1932 relating thereto and held by Deed of Transfer T1258/1969

Subject to the following conditions:

(Insert all the conditions of title as you would usually do, except if the court order provides to the contrary)

- 3 Erf 58 East London
Local Municipality of Buffalo City, Division East London, Province Eastern Cape
measuring 360 (three hundred and sixty) square metres

First transferred by Deed of Transfer T3/1933 with general plan S.G. No. 4879/1932 relating thereto and held by Deed of Transfer T1258/1969

Subject to the following conditions:

(Insert all the conditions of title as you would usually do, except if the court order provides to the contrary)

7.2 Supporting documents to be lodged at the deeds registry

- 1 **Existing title deed(s)** for the three properties (T1258/1972), if available. If not, an **affidavit** by the transferee that he has been unable to obtain possession of the title deed
- 2 **transfer duty receipt** for the three properties
- 3 **clearance certificate** for the three properties
- 4 certified copy of the **court order**²⁸

TOTAL: [200]

²⁸ The court order may be certified by a conveyancer, notary or the registrar of the High Court.

Model Answers to the Conveyancing Examination

May 2015

Part 2

Self-Study Deeds Course

Question 1 - Model answer

[8]

Section 10 was set up to protect lessees in a building from a developer who intends opening a sectional title register in respect of such building, since it prevents the developer to sell any unit of the building to a person other than the lessee unless -

- a) the developer has (by letter delivered either personally or by registered post) offered the unit for sale to the lessee; and
- b) the lessee was given 90 days to reply to such offer.

If the lessee -

- a) refuses such an offer within the applicable period; or
- b) has at the expiration of the 90 days period not accepted the offer;
- c) the developer shall not, within a period of 180 days from the date on which the lessee has refused the offer, or on which such applicable period has expired, offer for sale or sell the relevant unit to any person other than the lessee concerned at a price lower than the price at which it was offered for sale to the lessee, unless the developer has again offered the unit at that lower price for sale to the lessee; and
- d) he has refused the offer within a period of 60 days from the date thereof, or has on expiration of that period not accepted the offer.

- Any contract of purchase and sale concluded contrary to the provisions above, shall be *void* - (section 10(5)).
- A developer who contravenes the provisions of section 10 shall be guilty of an *offence*, and liable on conviction to a fine not exceeding R2,000.00 or to imprisonment for a period not exceeding twelve months, or to both such a fine and such imprisonment - (section 10(6)).

Question 2 - Model answer

[4]

A unit consisting of:

- a) Section No 25 as shown and more fully described on Sectional Plan No SS46/2009 in the scheme known as BLUE DIAMOND in respect of the land and building or buildings situate at THE FARM DIAMOND 123, REGISTRATION DIVISION JR, PROVINCE OF GAUTENG,²⁹ of which section the floor area, according to the said Sectional Plan is 100 (one hundred) 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.³⁰

HELD BY Deed of Transfer ST 2356/2013.

Question 3 - Model answer

[6]

Transfer duty must be calculated on the full value of the property, thus R100 000,00 X 26 = R2 600 000,00, whereafter the amount of transfer duty payable must be, in this instance, divided by twenty six. The scales applicable as on date of the transaction (1 January 2015) must be used.

R0-R600 000,00	exempt	=R 0,00
R600 000,00-R1 000 000,00 (R400 000,00) X 3%		=R 12 000,00
R1 000 000,00-R1 500 000,00 (R500 000,00) X 5%		=R 25 000,00
R1 500 000,00- R2 600 000,00 (R1 100 000,00) X 8%		=R 88 000,00
		=R125 000,00

$$\frac{R125000,00}{1} \times \frac{1}{26} = R4 807,69 \text{ transfer duty payable}$$

²⁹ Note that the full description of the Farm must be inserted here. In other words reference must be made to the name of the farm, its registration number, the registration division and the province - (RCR64/2008).

³⁰ Note that although the wording of this description can be found in Form H issued under the Sectional Titles Act, you are not provided with the prescribed forms in the second paper.

Question 4 - Model answer ³¹

[4]

Movable property, not forming part of the estate of the deceased may be introduced for the purpose of equalising the division in terms of a redistribution agreement - (section 14(1)(b)(iv) of the Deeds Registries Act).

No immovable property may, however, be brought in from outside the estate to effect an equal distribution. The one half share of a surviving spouse in the immovable property on grounds of her marriage in community of property with her deceased husband is, however, an asset that may be introduced to effect an equal distribution.

Question 5 - Model answer

[3]

No transfer duty is payable by the company, as immovable property that is inherited (either testate or intestate) from a deceased person is exempt from the payment of transfer duty - (section 9(1)(e)). It does not make a difference if the heir is a juristic person.

Question 6 - Model answer

[8]

Exemptions from the payment of transfer duty ³²

- 1 where the immovable property has been acquired by government institutions;
- 2 where the immovable property has been acquired by municipalities and water service providers;
- 3 where the immovable property has been acquired by public benefit organizations;
- 4 where the immovable property has been acquired by public hospitals
- 5 heirs or legatees who acquires property from a deceased person intestate, testate or due to a redistribution of assets;
- 6 where the immovable property has been acquired by a joint owner upon partition, provided no consideration was paid to equalise the partition;
- 7 where a joint owner acquires the sole ownership of a property, in respect of so much of the value of the property in which sole ownership is acquired as represents his share in the joint ownership of that property;
- 8 where a surviving or divorced spouse acquires ownership in the whole or any portion of property registered in the name of his or her deceased or divorced

³¹ This question was also asked as Question 6 (Part 2) May 2013, Question 6 (Part 2) May 2011 and Question 16 (Part 2) September 2010 for 4 marks.

³² Any of the following 8 exemptions could have been listed.

- spouse;
- 9 where the immovable property has been acquired by a spouse in a marriage in community of property in respect of the acquisition of an undivided $\frac{1}{2}$ share in that property by operation of law upon conclusion of such a marriage;
- 10 where a person requires his ownership in property to be registered in his name in a deeds registry where there has been an error in the registration of the acquisition of the property;
- 11 where the immovable property has been acquired by the individual partners of a partnership which is registered in the name of the partnership carried on by such partners;
- 12 where trust property is transferred by the administrator of a testamentary trust in pursuance of the will to the persons entitled thereto;
- 13 where trust property is transferred by the administrator of an *inter vivos* trust to a relative where the trust was founded by a natural person for the benefit of a relative.
- 14 where there is a change in the registration of property required as a result of the switching of trustees of a trust or of trustees of an insolvent estate;
- 15 where property is restored by a trustee of an insolvent estate to the insolvent;
- 16 where a surety (who stood surety for the payment of the consideration payable under a transaction) pays the consideration for which he stood surety and seeks transfer of the property in question into his own name;
- 17 no duty shall be payable in respect of the acquisition of property by way of a transaction, if the transaction is declared void by a court or in terms of which the property is acquired from a person whose estate is sequestrated subsequent to the date of the transaction, becomes void by reason of the sequestration or in terms of which property is acquired by a person whose estate is sequestrated prior to the registration of the acquisition by him of the property, is abandoned by the trustee of his insolvent estate;
- 18 where a company incorporated, managed and controlled in the Republic (the subsidiary company) acquires immovable property from a foreign company;
- 19 if any property has by expropriation been acquired by the State or any other institution of a public character and such property is re-acquired by the person from whom such property was expropriated;
- 20 where the immovable property has been acquired by a person under any transaction on which VAT is payable;
- 21 where a unit in a sectional title scheme is transferred to a shareholder in a shareblock scheme as a result of the conversion from a shareblok scheme to a sectional title scheme.

Question 7 - Model answer

[6]

“civil union” means the voluntary union of two persons who are both 18 years of age or older, which is solemnised and registered by way of either a marriage or a civil partnership, in accordance with the procedures prescribed in this Act, to the exclusion, while it lasts, of all others;

“civil union partner” means a spouse in a marriage or a partner in a civil

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Question 8 - Model answer

[6]

- 1 A person may only be a spouse or partner in one marriage or in one civil partnership, as the case may be, at any given time - (section 8(1)).
- 2 A person in a civil union may not conclude a marriage under the Marriage Act or the Customary Marriages Act - (section 8(2)). Likewise, a person who is married under the Marriage Act or the Customary Marriages Act may not register a civil union - (section 8(3)).
- 3 A prospective civil union partner who has previously been married must present a certified copy of the divorce order or death certificate of the former spouse or partner, as the case may be, to the marriage officer as proof that the previous marriage or civil union has been terminated – (section 8(4)). The marriage officer may not proceed with the solemnisation and registration of the civil union unless in possession of the divorce order or death certificate as aforesaid – (section 8(5)).
- 4 A civil union may only be registered by prospective civil union partners who would, apart from the fact that they are of the same sex, not be prohibited by law from concluding a marriage under the Marriage Act or Customary Marriages Act - (section 8(6)).

Question 9 - Model answer

[4]

“foreigner”

means an individual who is not a citizen;

“illegal foreigner”

means a foreigner who is in the Republic in contravention of the Immigration Act;

Question 10 - Model answer

[6]

If a credit agreement is unlawful in terms of section 89, a court must make a just and equitable order including but not limited to an order that -

- the credit agreement is **void ab initio**.³³

Question 11 - Model answer

[6]

Unless the Minister has consented in writing -

no lease agreement in respect of a portion of agricultural land shall be entered into, namely a **lease agreement** -

- a) for a period of 10 years or longer;
- b) for the period of the natural life of the lessee or any other person mentioned in the lease; or
- c) for a period which is renewable from time to time at the will of the lessee, either by the continuation of the original lease or by entering into a new lease, indefinitely or for periods which together with the first period of the lease amount in all to not less than 10 years - (section 3(d)); *(in other words, a long term lease agreement over a portion of agricultural land may not be entered into)*

Question 12 - Model answer

[4]

No person shall assume or describe himself or herself by or pass under any surname other than that under which he or she has been included in the population register, unless the Director-General has authorized him or her to assume that other surname: Provided that the aforementioned provision shall not apply when -

- a) woman after her marriage assumes the surname of the man with whom she concluded such marriage or after having assumed his surname, resumes a surname which she bore at any prior time;
- b) a married or divorced woman or a widow resumes a surname which she bore at any prior time; and

³³ Note that the National Credit Act was in this regard amended by the National Credit Amendment Act 19 of 2014 (GG37665 No 389 dated 19 May 2014) which came into operation on 13 March 2015.

- c) a woman, whether married or divorced, or a widow adds to the surname which she assumed after the marriage, any surname which she bore at any prior time.

Question 13 - Model answer ³⁴

[10]

13.1 Documents to be lodged in the deeds registry -

- 1 **Title deed(s)** for endorsement
- 2 he **founding statement** of the close corporation on which the conversion is indicated (or alternatively, a **CIPC certificate** regarding conversion and **conveyancer certificate** regarding verification of the CIPC certificate)

[2]

13.2 Certified copy of the Memorandum of Incorporation

- certified copy of the **registration certificate** of the Company
auditor's certificate
special resolution by the shareholders of the company
resolution by the directors of the company

[2]

13.3 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]

13.4 Certified copy of the constitution of the church

- resolution** that complies with the requirements as set out in the constitution

[2]

13.5 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

[2]

³⁴ Similar questions were asked in Question 1 (Part 2) May 2013, Question 1 (Part 2) May 2011 and Question 2 (Part 2) May 2009.

- 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; ³⁶
 - 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;
 - 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).*

³⁵ This question was also asked as Question 11 (Part 2) May 2013, Question 11 (Part 2) May 2011, Question 11 (Part 2) May 2009 and Question 3.1 (Part 1) May 2001.

³⁶ The certificate must be issued in the personal name of the deceased and not in his estate. The consent by the local authority confirming compliance with the conditions subject to which the subdivision has been approved will normally be endorsed at the back of this application or a separate certificate may be issued, depending on the relevant former provinces.

- 4 ***Lodgement cover nr 4 - K: Notarial deed of cession usufruct by executor in favour of Rose-Marie Smith***
- a) **notarial deed of cession** by the executor in favour of Rose-Marie Smith;
 - b) **copy of the will, certified** as a true copy by the master and **endorsed as accepted** by him.
- 5 ***Lodgement cover 5 - Transfer: from the executor to Elizabeth Smith***
- a) **Power of attorney**, to be signed by the executor, of Erf 100, in favour of Elizabeth Smith;
 - b) **concept (draft) deed of transfer**;
 - c) **transfer duty exemption certificate**;
 - 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 15 - 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 vests 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.

- 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)

TOTAL: [100]

Compiled by

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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