

# Model Answers to the Conveyancing Examination

## September 2015

### Part 1

#### Self-Study Deeds Course

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

[20]

1.1

Prepared by me

CONVEYANCER  
Erinda Frantzen

#### Application in terms of Section 45bis(1A) of the Deeds Registries Act 47 of 1937

We, the undersigned,

1 John Smith  
Identity number 601203 5544 08 7  
unmarried

2 Mary Smith  
Identity number 680209 0004 08 8  
unmarried

HEREBY declare that -

1 Erf 23 Glen Morgan  
Registration Division E.T., Province of KwaZulu Natal  
Measuring 950 (nine hundred and fifty) square metres

Held by Deed of Transfer T1234/1998

is registered in our names, married in community of property to each other.

2 The marriage between us was dissolved by divorce in terms of an order of the High Court of South Africa KwaZulu-Natal Division, Pietermaritzburg under case number 2357/2015 on 1 August 2015.

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<sup>1</sup> A very similar question was asked as Question 1 (Part 1) September 2009 for 10 marks and in Question 1 (Part 1) May 1994 for 10 marks.

- 3 In terms of a settlement agreement dated 28 July 2015 which was made part of the aforesaid court order, the above property was awarded to both of us in equal shares.
- 4 We hereby apply in terms of section 45bis(1A) of the Deeds Registries Act 47 of 1937 to the Registrar of Deeds at Pietermaritzburg, for the endorsement of the abovementioned Deed of Transfer T1234/1998 to the effect that each one of us is entitled to deal with his or her one-half share of the above-mentioned property as if each of us had received formal transfer thereof.
- 5 We declare that the value of the property hereby transferred is R3 000 000,00 (three million rand) is.<sup>2</sup>

Signed at Pietermaritzburg on 9 September 2015.

\_\_\_\_\_  
Mary Smith

\_\_\_\_\_  
John Smith [18]

- 1.2 No transfer duty is payable, as the payment thereof is exempt in terms of the Transfer Duty Act. [2]

## Question 2 - Model answer <sup>3</sup>

[30]

The answer to question 2.1 can be found on the next page
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### 2.2 Supporting documents to be lodged

- a) Draft **deed of transfer** <sup>4</sup>
- b) **existing Title Deed** T6491/1989
- c) **power of Attorney** to pass transfer
- d) **rates Clearance** Certificate
- e) **transfer duty exemption certificate**
- f) **mortgage bonds for disposal**, if any
- g) I will only *refer* to the **copy of the will** which was lodged with the application in terms of section 40 of the Administration of Estates Act.

[5]

<sup>2</sup> The reason why the value of the property must be stated in the application, is to enable the deeds registry to calculate its fee thereon.

<sup>3</sup> Similar questions were asked in Question 1 (Part 1) May 2007 and Question 2 (Part 1) May 1994. Also see **Example 7P** in Part 4 of the Self Study Deeds Course for Attorneys.

<sup>4</sup> Note that the draft **deed of transfer** is not strictly speaking a *supporting document*.

CONVEYANCER  
Gabriël Jacobus le Roux

## Power of Attorney to pass transfer

I, the undersigned,

Adriaan Boshoff in my capacity as nominee of Best Bank Limited, Registration Number 1965/003456/06, and as such the trustee<sup>5</sup> of the Bheki Khumalo Testamentary Trust, Registration number MT 123/2012, duly authorised hereto by letters of authorisation issued by the Master of the High Court, Pretoria on 20 March 2012

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

WHEREAS the late Bheki Khumalo who died on 6 December 2011 in her will dated 2 December 1998 bequeathed the undermentioned property to her trustees to be held in trust until the undermentioned transferee reaches the age of 21 years;

AND WHEREAS the undermentioned transferee has reached the age of 21 years and is entitled to the undermentioned property in terms of the trust created in the said will, subject to the condition of the will that the said property shall not form part of any community of property, more fully described hereunder;

NOW THEREFORE I hereby authorise the appearer to transfer to  
Zondi Khumalo  
Identity Number 931220 0073 08 8  
Unmarried

the following property, namely:

Erf 122 Cornwall Township  
Registration Division I R, Province Gauteng  
Measuring 1 200 (one thousand two hundred) square metres

Held by Deed of Transfer T6491/1989

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<sup>5</sup> Or "... appointed in the testamentary trust created in the estate of the late Bheki Khumalo" or "... in the estate of the late Bheki Khumalo" if no name was allocated to the trust.

Subject to the following condition set out in the will dated 2 December 1998 of the said late Bheki Khumalo::

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

and generally for effecting the purposes aforesaid, to do or cause to be done whatsoever shall be requested, as fully and effectually as I could have done if personally present and acting herein.

Signed at Pretoria on this the 9 th day of September 2015.

As Witnesses:

1 \_\_\_\_\_  
 2 \_\_\_\_\_

[20]

The model answer for question 2.2 can be found on page 2 above.

2.3 The Section 40(1)(b) of the Administration of Estates Act endorsement has already been effected. Sections 42(1) and 42(2) of the Administration of Estates Act 66 of 1965 do not apply [2]

2.4 **Documents to be obtained for your file**

- a) Zondi's **identity document** and **affidavit** regarding her solvency and marital status
- b) **resolution** whereby Best Bank Ltd **nominates** Adriaan Boshoff
- c) **resolution by the trustee** wherein the transfer and termination of the trust is authorised
- d) **letters of appointment** of the trustee
- e) copy of the **will** of Bheki Khumalo incorporating the mortis causa trust
- f) **solvency affidavit** by the trust [3]

### Question 3 - Model answer <sup>6</sup>

[10]

- a) This agreement is subject to the suspensive condition that the purchaser is successful in selling another property of his, within 90 days after signature of this agreement, being Erf 1003, Heatherton Township for a purchase price of not less than R 1 750 000,00 (one million seven hundred and fifty thousand rand). The purchaser shall have in his sole and absolute discretion the choice to accept a lower purchaser price for such property in which event this condition shall be deemed to be fulfilled.
- b) The sale of the purchaser's property shall not, in turn, be subject to the sale of any further properties or any other suspensive conditions other than those relating to mortgage bond financing of the purchaser's purchase. These suspensive conditions relating to mortgage finance in the agreement of sale relating to the property in paragraph (a) above, must be fulfilled by no later than 28 days after signature thereof.
- c) The purchaser shall, within 5 (five) days of the sale of the property referred to in paragraph (a) above, provide the seller with a copy of such agreement.
- d) Transfer of the purchaser's property mentioned in paragraph (a) and the property sold in terms of this agreement shall be registered simultaneously and the proceeds of the sale in respect of the property mentioned in paragraph (a) shall be appropriated towards the purchase price of the property sold in terms of this agreement.

#### **An alternative example**

- 1 This agreement is subject to the suspensive condition that the purchaser's property known as Erf 1003 Heatherton (hereinafter referred to as "the second property") is sold for not less than R1 750 000,00 (one million seven hundred and fifty thousand rand) before or on 15 February 2016. This condition shall be deemed to be fulfilled when -
  - 1.1 the full purchase price of the second property had been secured by guarantees or cash, such guarantees to be conditional only upon registration of transfer of the second property, bond cancellation and bond registration relating thereto;
  - 1.2 transfer costs and transfer duty in respect of the second property have been paid to the relevant transferring attorneys.
- 2 It is agreed that transfer of the property and the second property shall be registered simultaneously, together with the necessary simultaneous transactions.

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<sup>6</sup> Also asked in Question 3 (Part 1) September 2009 for 6 marks, in Question 5 (Part 1) May 1999 for 8 marks and in Question 3 (Part 1) May 1994.

## Question 4 - Model answer <sup>7</sup>

[20]

4.1

Prepared by me

Form O

CONVEYANCER

Erinda Frantzen

### Application under section 22(1)

of the Sectional Titles Act, 1986

I, the undersigned

Robert Hopewell

in my capacity as member and duly authorised thereto by virtue of a resolution of

BOBWELL CC

Registration number 1990/000167/23

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

- 1 The registration of the attached sectional plan of subdivision of a section in terms of section 22(1) of the Sectional Titles Act, 1986, in respect of sections no. 21 and 22, formerly section no. 11 as shown and more fully described on sectional plan no. SS 315/1990 in the scheme known as MOUNTAIN VIEW in respect of the land and building or buildings situate at MOUNTAIN VIEW TOWNSHIP, Local Authority: CITY OF TSHWANE METROPOLITAN MUNICIPALITY and held under Deed of Transfer ST4321/1993;
- 2 The issue of certificates of registered sectional title in terms of the provisions of section 22(5) of the aforesaid Act in respect of the sections shown on the said sectional plan of subdivision.

Signed at Pretoria on 9 September 2015

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R Hopewell obo Bobwell CC  
[8]

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<sup>7</sup> Similar questions have been asked in Question 8 (Part 1) May 2012, Question 2 (Part 1) May 2009, Question 6 (Part 1) September 2008, Question 2 (Part 1) September 2007 and Question 4 (Part 1) May 1994.

**Form AM**CONVEYANCER  
Erinda Frantzen**Consent**

## to the registration of the sectional plan of subdivision

I the undersigned

Jacob Pierneef in my capacity as signing official and duly authorised thereto  
by virtue of a resolution of the board of directors of  
URBAN BANK LIMITED

Registration number 1960/000023/06

being the legal holder of the undermentioned mortgage bond, namely:-

Mortgage Bond No	SB3210/1993
Passed by	Bobwell CC
	Registration number 1990/000167/23
in favour of	Urban Bank Limited
	Registration number 1960/000023/06
for the for the sum of	R1 750 000,00 (one million seven hundred and fifty thousand rand)
and an additional sum of	R350 000,00 (three hundred and fifty thousand rand)

do hereby consent to

- 1 the registration of the sectional plan of subdivision and the subdivision of section 11 into sections to be known as sections 21 and 22 in the scheme Mountain View, subject to the abovementioned bond in accordance with Sectional Plan S.G. D753/2014;
- 2 the issue of certificates of registered sectional title in respect of section 21 and 22 and the undivided share in the common property attached to such sections according to the participation quotas reflected on the said sectional plan; and
- 3 the substitution of the new sections in lieu of section 11 as security under the bond and the endorsement of the abovementioned bond to the effect that it attaches to the sections and common property as shown on the said sectional plan.

Signed at Johannesburg on 25 September 2015.

As witnesses:1 \_\_\_\_\_

2 \_\_\_\_\_

J Pierneef obo URBAN BANK LTD [12]

Form LL

Prepared by me

CONVEYANCER  
Erinda Frantzen

## Surety Bond

Known all men whom it may concern:

That **Ilse Pretorius** appeared before me, the **Registrar of Deeds at Johannesburg** she being duly authorised thereto by a power of attorney dated at **Johannesburg** on **1 September 2015** and granted to her by -

**Neil Scrooby**  
**Identity Number 650312 5009 08 2**  
**Unmarried**  
**(Hereinafter called the “mortgagor”)**

which power of attorney has this day been exhibited to me;

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<sup>8</sup> Similar questions were asked in Question 2 (Part 1) May 2007 and Question 5 (Part 1) May 1994. Also see **Example 14C** in Part 4 of Self-study Deeds Course for Attorneys.

And the Appearer declared that;

WHEREAS -

**Scrooby Proprietary Limited**  
**Registration number 1980/000321/07**  
(hereinafter called the "principal debtor")

is truly and lawfully indebted in the sum of **R5 500 000,00 (five million five hundred thousand rand)** to and on behalf of -

**Settlers Bank Limited**  
**Registration number 1985/007734/06**  
("the Mortgagee")

arising from **the issue of performances guarantees by the Mortgagee in respect of certain work to be performed by the principal debtor, for which indebtedness the Mortgagee requires indemnification against any claim arising from such performance guarantees;**

**AND WHEREAS the principal debtor granted a written indemnity dated 3 August 2015 as required by the Mortgagee, for which the principal debtor did not provide security in the form of a mortgage bond,**<sup>9</sup>

**AND WHEREAS the Mortgagee requires the Mortgagor to bind himself as surety and co-principal debtor for the obligations of the principal debtor under the said indemnity;**

AND WHEREAS the said **Mortgagor** has agreed to bind himself as surety and co-principal debtor for the due payment of the aforesaid sum and interest thereon and for compliance by the principal debtor with all the terms and conditions of the aforesaid indemnity, as herein specified, mortgaging as security for the fulfilment of the said obligations the herein-after property;

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<sup>9</sup> A surety bond can be registered for either a secured or an unsecured debt. If registered for an unsecured debt, the surety bond must expressly make mention of this fact.

NOW THEREFORE, the appearer declared his principal, the said **Mortgagor** to be truly and lawfully indebted and held and firmly bound to and on behalf of the **Mortgagee** in the sum of **R5 400 000,00 (Five million four hundred thousand rand)** arising from the considerations aforementioned under renunciation of the legal exceptions *de duobus vel pluribus reis debendi*<sup>10</sup> and *beneficium ordinis seu excussionis* with the force and effect whereof he declared his principal to be fully acquainted;

And for the proper performance of the Mortgagor's obligations under this bond the appearer q.q. declared to bind specially as a second mortgage

**ERF 1537 Hopewell Township**  
**Registration Division I R, Province of Gauteng**  
**Measuring 3 000 (three thousand) square metres**

**Held under Deed of Transfer T 333/1995**

subject to the conditions therein contained and subject to the following conditions:

- 1.1 This bond shall in no way interfere with, prejudice or affect the rights and preference of We-Make-Money Bank Limited (Registration number 1990/001234/06) under mortgage bond B334/1995,<sup>11</sup> registered by the Mortgagor against the mortgage property as a first mortgage, which bond rank in preference to this bond and which rights and preference shall remain in all respect as if this bond had not been passed;**
- 1.2 The Mortgagee may not cause the property to be attached in execution of a judgment, nor may he sequestrate or liquidate the Mortgagor or place the Mortgagor under judicial management as the case may be, without him first having obtained the consent in writing of We-Make-Money Bank Limited thereto;**
- 1.3 We-Make-Money Bank Limited may exercise the right granted it under its prior bond to make further advances to the Mortgagor; the Mortgagee shall not cede or assign this bond without the written consent of We-Make-Money Bank Limited;**

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<sup>10</sup> The surety also bound himself as co-principal debtor.

<sup>11</sup> Or "its prior ranking mortgage bond".

**1.4 Unless We-Make-Money Bank Limited otherwise agrees this bond shall be handed to and retained by We-Make-Money Bank Limited until this bond or the bond in favour of We-Make-Money Bank limited is cancelled.**

**1.5 It is a special condition of this bond that should the principal debtor fulfil all his obligations towards the Mortgagee in respect of the aforementioned debt, this bond shall become null and void.**

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

Thus done and executed at the office of the Registrar of Deeds at Johannesburg on \_\_\_\_\_ 2015.

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

\_\_\_\_\_  
qq APPEARER

### **Question 6 - Model answer** <sup>12</sup>

**[15]**

6.1 Subject to the following condition in favour of the transferor, the said Mary Lamb, identity Number 470107 0012 08 3, unmarried:

The transferee may not sell the property without first offering it in writing to the transferor and the transferor was afforded at least 48 hours to accept or reject the offer in writing.<sup>13</sup> [5]

6.2 The servient property hereby transferred is subject to the condition that the registered owner of such servient property or his successors in title may not erect buildings of more than one storey (the term “one story” to have its usual interpretation) or any building or structure which will encroach on the view enjoyed by the dominant tenement over the ocean on the servient property so as to not obstruct the view of the owner of the dominant tenement or his successors in title in favour of -

<sup>12</sup> Also asked in Question 6 (Part 1) May 1994 for 12 marks.

<sup>13</sup> Also see Question 6 (Part 1) May 2010 where candidates had to draft a power of attorney and partition agreement including a right of first refusal in favour of one of the joint owners to the partition agreement.

Erf 123 Lucky Township  
situate in the city of Cape Town, Cape Division, Province Western Cape  
measuring 1 000 (one thousand) square metres

Held by Deed of Transfer T5378/2008.  
(the dominant tenement)

[5]

- 6.3 The property hereby transferred is subject to a servitude of right of way, 3 metres wide, running parallel and along the entire length of the southern boundary of the property hereby transferred, which southern boundary is indicated by the line CD on diagram SG no 2380/2006 annexed to Deed of Transfer T 23587/2006 in favour of -

Erf 101 Sunsetview  
Registration Division ET, Province of KwaZulu-Natal

In extent: 980 (nine eight nil) square metres

Held by Deed of Transfer T32123/1991

[5]

### Special Power of Attorney

I, the undersigned

JOHN SMITH

Identity number 550619 5789 08 2

widower

in my personal capacity and in my capacity as executor in the estate of late Irene Smith, estate number 7891/2015, duly authorised thereto by virtue of letters of executorship issued by the Master of the High Court, Johannesburg on 15 November 2015

do hereby nominate constitute and appoint SAM SMITH <sup>15</sup> with power of substitution to be my lawful attorney and agent and in my place and stead to market and sell the undermentioned property and to sign and execute the deed of sale as well as all documents required to pass transfer and to appoint a conveyancer to effect the transfer of the property -

Erf 100 Acacia Township

Registration Division I.Q., Province of Gauteng

in extent 1 000 (one thousand) square metres

Held by Deed of Transfer T49194/1983

to the purchaser thereof, subject to the following condition -

The property mentioned herein shall not be sold for a price less than R2 150 000,00 (two million one hundred and fifty thousand rand), which sum may include agent's commission.

And to receive and hold the proceeds of the sale on behalf of his principal.

Signed at Johannesburg on 9 September 2015.

As witnesses: 1 \_\_\_\_\_

2 \_\_\_\_\_

John Smith in my personal capacity and as executor

<sup>14</sup> A very similar question was asked in Question 4 (Part 1) September 2009 for 8 marks and in Question 7 (Part 1) May 1994 for 8 marks. Also see **Example 5 C-1** in Part 4 of the Self-study Deeds Course for Attorneys.

<sup>15</sup> Although Sam Smith is married in community of property he does not deal with property in his joint estate and is merely appointed as an agent. His wife therefore does not need to be appointed jointly with him.

**Application in terms of section 37**  
of the Deeds Registries Act 47 of 1937

I, the undersigned

Joe Jardim in my capacity as trustee in the insolvent estate of

Pieter Louw

Identity number 790508 5236 08 4

unmarried

duly authorised thereto by virtue of letter of authority 539/2015 issued by the  
Master of the High Court at Kimberley on 15 June 2015

do hereby apply at the Registrar of Deeds at Kimberley in terms of the provision of  
section 37 of the Deeds Registries Act for the issue to the said Pieter Louw of a  
certificate of registered title under the provisions of section 35 of the Deeds Registries  
Act 47 of 1937 in respect of his aggregate share in the undermentioned property,  
namely -

5/8 (fifth eighth) share in and to

Erf 123 Kimberley

situated in the Sol Plaatjie Municipality, District Kimberley, Province Northern  
Cape

Measuring 2 800 (two thousand eight hundred) square metres

Held by the following title deeds in the following shares namely -

1/4 (one quarte) share by means of Deed of Transfer T1234/2004;

1/4 (one quarte) share by means of Deed of Transfer T567/2009; and

1/8 (one eight) share by means of Deed of Transfer T789/2012.

Signed at Pretoria on 9 September 2015.

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Joe Jardim (trustee)

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<sup>16</sup> A very similar question was asked as Question 5 (Part 1) September 2009 for  
7 marks.

## Question 9 - Model answer <sup>17</sup>

[10]

- 9.1 Erf 444 Summerton Township  
Registration Division J.R. Province of Gauteng  
Measuring 496 (four nine six) square metres  
Held by Deed of Transfer T7739/2013

Subject to the conditions contained therein and specially subject to a lease in favour of John Hampshire and Joan Hampshire, married in community of property to each other, as will more fully appear from Notarial Deed of Lease No.

K319/2014L, preference in respect of which has been waived as more fully set out hereunder [3]

### 9.2 **Waiver** <sup>18</sup>

- i Also appeared the said Erinda Frantzen duly authorised thereto by power of attorney, executed at Pretoria on 20 August 2015, and granted in her favour by

John Hampshire

Identity Number: 701212 5004 08 7 and

Joan Hampshire

Identity Number: 721201 0073 08 2

Married in community of property to each other

- ii AND the appearer declared that the said *John Hampshire and Joan Hampshire*, declared to waive and postpone, as they hereby waive and postpone, in favour of this mortgage bond, the lease over the said property held by her principals by the notarial deed of lease no. K319/2014L to the intent that his/her said principals shall not at any time be in a position by virtue of such lease to compete with the said mortgagee, but in the event of the said property being sold in execution or insolvency, the mortgagee shall have the right to have the property transferred to the purchaser thereof free from such lease and to have the whole of the proceeds of such sale applied towards payment of such moneys as shall then be due and owing to the mortgagee under this bond, plus all costs and interests due. [7]

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<sup>17</sup> Also asked in Question 4 (Part 1) May 2011 for 15 marks and in Question 4 (Part 1) May 1995 for 13 marks.

<sup>18</sup> This clause is inserted in the mortgage bond, preferably at the end of the bond, just before the execution clause.

**Question 10 - Model answer**

**[30]**

<b>Statement of account: Seller</b>			
Transfer from Executor in the estate of late Diya Singh to A Peters of Unit 2 and Parking Bay 2 in the scheme known as Palm Views			
	<u>Description</u>	<u>Debit</u>	<u>Credit</u>
Received	Purchase price		1 000 000,00
to	Estate Agent's Commission	50 000,00	
to	Electrical Compliance Certificate paid to Expert Wiring	1 500,00	
to	Entomologist Certificate paid to Pest Wizard	1 000,00	
to	Cancellation fee iro bond in favour of Miracle Bank	3 500,00	
to	Redemption sum paid to Miracle Bank	450 000,00	
to	Hartless attorneys for upliftment of interdict	1 200,00	
to	Valuation certificate issued by Realty Estates	1 500,00	
to	Our fee for obtaining section 42(2) endorsement	800,00 <sup>19</sup>	
to	Mandla Contractors for repairs to driveway	25 000,00	
to	Pro rata rates & taxes (1/06/2015-31/08/2015)	3 750,00	
to	Pro rata levies (1/07/2015-31/08/2015)	1 600,00	
	<b>Total</b>	<b>539 850,00</b>	
	<b>Amount owed to Meera</b>	<b>230 075,00</b>	

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<sup>19</sup> The question pertinently states that your fee to have the power of attorney endorsed in the amount of was paid on date of registration. This implies that the R800 already includes VAT.

	<b>Amount owed to Rahul (to be paid to the guardianship fund)</b>	<b>230 075,00</b>	
	Balances	1 000 000,00	1 000 000,00

**Statement of account: Purchaser - A Peters**

Transfer from Executor in the estate of late Diya Singh to A Peters of Unit 2 and Parking Bay 2 in the scheme known as Palm Views

	<u>Description</u>	<u>Debit</u>	<u>Credit</u>
to	Purchase Price	1 000 000,00	
received	Guarantees for part of purchase price		500 000,00
received	Loan from father iro purchase price		200 000,00
to	Our fee for registration of transfer	14 550,00	
to	VAT on our registration fee <sup>20</sup>	2 037,00	
to	Postage & Petties	650,00	
to	VAT on postage & petties	91,00	
to	Transfer duty	7 500,00 <sup>21</sup>	
to	Rates Clearance Certificate	318,06	
to	Levy Clearance Certificate	850,00	
to	Deeds Office Registration Fee	1 130,00	
to	Deeds Office Search Fee	205,00	
to	VAT on deeds office search	28,70	
to	FICA Verification Fee	550,00	
to	VAT on FICA verification fee	77,00	
to	Fee for cession of exclusive use area	1 800,00	

<sup>20</sup> You could also have indicated the VAT as one global amount for all the item, as indicated on the pro forma statement provided in the examination question.

<sup>21</sup> Although you did not need to calculate the transfer duty payable as it was already given to you, the transfer duty is calculated as follows:

First R750 000,00 is exempt	=R 0,00
From R750 000,00 - R1 000 000,00 (=R250 000) X 3%	=R7 500,00
<b>TOTAL</b>	<b>=R7 500,00</b>

to	VAT on cession fee	252,00	
to	Pro rata Rates <sup>22</sup> (1/09/2015-31/12/2015)	5 000,00	
to	Pro rata Levies <sup>23</sup> (1/09/2015-30/09/2015)	800,00	
received	Proceeds of sale of your existing property		400 000,00
to	Our fee for drafting acknowledgement of debt (VAT incl)	550,00	
received	Interest on deposit		2 200,00
	Total	1 036 388,76	
	<b>Amount due to you</b>	<b>65 811,24</b>	
	Balances	1 102 200,00	1 102 200,00

**TOTAL: [200]**

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<sup>22</sup> This was calculated as follows:  
The rates and taxes payable for 7 months are R8750,00. The rates and taxes payable for 1 month are therefore  $8\ 750,00 \div 7 = R1\ 250,00$ . The purchaser is liable for payment of rates and taxes from date of registration, i.e. from 31/08/2015. The purchaser is therefore liable for the rates and taxes for the months of September to December, in other words for 4 months. Thus  $R1\ 250,00 \times 4 = R5\ 000,00$ . The balance ( $R8\ 750,00 - R5\ 000,00 = R3\ 750,00$ ) that was paid by the transfer attorneys must be obtained from the seller.

<sup>23</sup> The levies payable for 3 months amount to R2400,00. Thus levies payable for 1 month  $= R2\ 400,00 \div 3 = R800,00$ . The purchaser is liable for levies for the full month of September, thus R800,00 and the seller for July and August, in other words for R1 600,00.

# Model Answers to the Conveyancing Examination

## September 2015

### Part 2

#### Self-Study Deeds Course

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#### Question 1 - Model answer <sup>24</sup>

[8]

- 1.1 The executor of the estate concerned must realise the land (or undivided share concerned, as the case may be,) **and divide the nett proceeds thereof between the heirs.**<sup>25</sup> As an alternative, the heirs can establish a company (or other legal entity or persona) and purchase the land from the estate in the name of such company. [2]
- 1.2.1 **Servitudes that may be registered without the consent of the Minister in terms of section 6A:**
- a) A right of way, aqueduct, pipe line or conducting of electricity with a width not exceeding 15 metres;
  - b) A servitude which is complementary to the abovementioned servitude and which has a servitude area not exceeding 225 square metres which adjoins the area of the last-mentioned servitude; and
  - c) A usufruct over the whole of agricultural land in favour of one person or in favour of such person and his spouse or the survivor of them if they are married in community of property. [5]
- 1.2.2 When a *habitatio* is to be registered in favour of one person or body for a period of less than 10 years, the consent of the Minister of Agriculture shall

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<sup>24</sup> This question has also been asked in Question 1, May 1994 (Part 2) for 9 marks.

<sup>25</sup> Or “... **dispose of the nett proceeds thereof** in accordance with the said testamentary disposition or intestate succession”. - (the exact wording of section 5).

not be required.<sup>26</sup> If the *habitat* is, however, granted for a period of 10 years or longer or for the life of the holder of such right, the consent of the Minister of Agriculture must be obtained and lodged. A diagram will also be a prerequisite. [1]

## Question 2 - Model answer <sup>27</sup> [3]

2.1 Yes. [1]

2.2 Yes. [1]

2.3 If an underlying deed of suretyship is signed by one of the spouses, the consent from the other spouse is not required. If a person who is married in community of property, however, passes a surety **bond**, even if it is in the ordinary course of your business, it amounts to an alienation of immovable property and the consent of the other spouse is required. [1]

## Question 3 - Model answer <sup>28</sup> [6]

3.1 The seller must record the contract at the deeds registry within *90 days* from the date –  
a) of the contract, if the land is registrable; or  
b) upon which the land becomes registrable; or  
c) upon which the land is registered in the name of a purchaser in terms of a preceding contract which was or was required to be recorded in terms of section 20. [1]

3.2 If the seller fails to record the contract within 90 days from the date aforesaid, the purchaser may -  
a) cancel the contract within 14 days, i.e. after the period of 90 days; or  
b) *at any time thereafter apply to the registrar concerned to record the contract* (if the purchaser prefers not to cancel the contract). [2]

### 3.3 Documents to be lodged at the deeds registry:

1 Application and affidavit - (Form A)

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<sup>26</sup> Chief Registrar's Circular 3/1995 and Registrars' Conference Resolution 42/1996.

<sup>27</sup> Previously asked in Question 2 (Part 2) May 1994 for 3 marks.

<sup>28</sup> Previously asked in Question 3 (Part 2) May 1994 for 6 marks.

- 2 title deed of the land  
3 proof that the land is registrable (if applicable) [2]

3.4 No, the consent of the mortgagee is not required and the bond does not need to be lodged. [1]

#### **Question 4 - Model answer** <sup>29</sup> [3]

No developer may by virtue of a contract receive any consideration or any part thereof unless -

- a) an architect or a quantity surveyor has issued a certificate that the housing development scheme concerned -
- has been erected substantially in accordance with any applicable officially approved building plans and town-planning scheme and applicable local authority by-laws; and
  - is sufficiently completed for the purposes of utilization of the housing interest concerned;
- b) a copy of that certificate and a copy of the contract have been furnished to the purchase concerned; and
- c) in the case where a housing interest includes a right of occupation, an attorney has issued a certificate that the title deed of the land to which the right of occupation relates, has been endorsed as contemplated in section 4C, in so far as endorsement is required by that section, and a copy of that certificate has been furnished to the purchaser.<sup>30</sup>

#### **Question 5 - Model answer** <sup>31</sup> [3]

A long term lease shall be valid against a creditor or successor under onerous title of the lessor **for a period longer than 10 years** if -

- a) it has been registered against the title deeds of the leased land; or  
b) the aforesaid creditor knew of the lease at the time of the giving of the credit by which he obtained a real right in respect thereof; or

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<sup>29</sup> Previously asked as Question 5 (Part 2) May 1994 for 3 marks.

<sup>30</sup> Section 6(1) of the Housing Schemes for Retired Persons Act 65 of 1988.

<sup>31</sup> Previously asked as Question 6 (Part 2) May 1994 for 3 marks.

- c) the aforesaid successor in title knew of the lease at the time of the entry into the transaction by which he obtained the leased land or a portion thereof.<sup>32</sup>

## Question 6 - Model answer

[18]

- 6.1 The transfer duty implications are dependent on the wording of the donation in the antenuptial contract. If the donation is couched in general terms for example “I donate immovable property not less than R... to my wife, same to be determined and transferred during our marriage”, then no acquisition of property has taken place and no transfer duty is payable. If specifically described immovable property is donated, transfer duty would however be payable. Transfer duty is payable within six months from the date on which the antenuptial contract has been executed before the notary. A caveat will be noted against the specific property and before the owner may deal (transfer or mortgage) with the property he will first have to satisfy the Registrar that transfer duty has been paid.<sup>33</sup> The consent of A’s wife to the registration of the bond is, however, not required.<sup>34</sup> [5]
- 6.2 As a general rule, no transfer duty will be payable as this is an exemption in terms of section 9 of the Transfer Duty Act. A transfer duty exemption certificate must, however, be lodged together with the application for the section 24bis(2) endorsement. If there was a change in the shareholding of the partners between the dates of registration of the property into the name of the partnership and the dissolution thereof, transfer duty is payable.<sup>35</sup> [3]
- 6.3 Transfer duty should first be calculated on the value of the whole property (in other words on R9 000 000,00) whereafter the amount of transfer duty payable must be, in this instance, divided by two. Thus:<sup>36</sup>

$$\begin{array}{lcl} \text{R } 0,00 - \text{R}750\,000 \times 0\% & = & \text{R } 0,00 \\ \text{R } 750\,001 - \text{R}1\,250\,000 \times 3\% \text{ (thus R}500\,000 \times 3\%) & = & \text{R } 15\,000,00 \end{array}$$

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<sup>32</sup> Section 1(2) of the Formalities in Respect of Leases of Land Act.

<sup>33</sup> Section 92(2) of the Deeds Registries Act.

<sup>34</sup> Previously asked as Question 8 (Part 2) May 1994 for 3 marks.

<sup>35</sup> Registrar’s Conference Resolution 3(i) of 1961. Previously asked in Question 9 (Part 2) May 1994 for 3 marks.

<sup>36</sup> Previously asked in Question 10.1 (Part 2) May 1994 for 6 marks.

R1 250 001-R1 750 000 X 6% (thus R500 000 X 6%)	=	R 30 000,00
R1 750 001-R2 250 000 X 8% (thus R500 000 X 8%)	=	R 40 000,00
R2 250 001-R9 000 000 X 11% (thus R6 750 000 X 11%)	=	<u>R742 500,00</u>
TOTAL	=	<u><b>R827 500,00</b></u>

R827 500,00 ÷ 2 = **R 413 750,00 transfer duty payable in respect of the ½ half share in the property.** [6]

- 6.4 Transfer duty payable by a trust is calculated according to the same gliding scales as those applicable to a natural person. The transfer duty is calculated as follows:<sup>37</sup>

R 0,00 - R750 000 X 0%	=	R 0,00
R 750 001 - R1 250 000 X 3% (thus R500 000 X 3%)	=	R 15 000,00
R1 250 001-R1 750 000 X 6% (thus R500 000 X 6%)	=	R 30 000,00
R1 750 001-R2 250 000 X 8% (thus R500 000 X 8%)	=	R 40 000,00
R2 250 001-R3 000 000 X 11% (thus R750 000 X 11%)	=	<u>R 82 500,00</u>
TOTAL	=	<u><b>R167 500,00</b></u>

[4]

## Question 7 - Model answer <sup>38</sup>

[15]

- 7.1 No. Section 4(2) of the Sectional Titles Act provides that the contiguous erven may be notarial tied. [2]
- 7.2 The developer must notify every lessee in writing (14 days' notice) of a meeting to be held at which the developer intends to be available to the lessees with -
- particulars of the scheme as they may reasonably require from him; and
  - the information regarding their rights as set out in section 10.

The Developer must at the same time as giving notice, provide the lessees with a certificate containing the prescribed particulars in respect of the relevant building and parts thereof or units therein and of the relevant scheme; and

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<sup>37</sup> Previously asked in Question 10.2 (Part 1) May 1994 for 6 marks.

<sup>38</sup> Questions 7.1-7.3 were asked in Question 14 (Part 2) May 1997 for 10 marks. Also asked in Question 11 (Part 2) May 1994 for 15 marks.

The developer must hold a meeting at which he is present to provide all the particulars referred to above and answer all reasonable questions of the lessees. The developer does not have to hold a meeting if all lessees have stated in writing that they are aware of their rights and that they do not wish to purchase the proposed units which they occupy. A certificate by a conveyancer that such statements have been received in respect of all the units must then accompany the submission of the draft sectional plan to the Surveyor-General for approval.<sup>39</sup> [5]

- 7.3 Section 10 provides that a developer may not offer to sell or 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. [3]

- 7.4 Section 26(1) of the Alienation of Land Act provides that no person shall by virtue of a deed of alienation relating to a unit receive any consideration until such unit is registrable. A unit is registrable as soon as the sectional title register has been opened.

A consideration may, however, be received:

- a) if the purchaser entrusts to a practitioner or an estate agent in his capacity as such a consideration to be kept, for the benefit of the seller in terms of that deed of alienation, in the trust account of the practitioner or estate agent; or

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<sup>39</sup> Section 4(3) of the Sectional Titles Act.

- b) if the seller, before such 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 and a recording is not effected within the period specified in the said guarantee.

My client will therefore not be entitled to utilize the deposits to cover the costs of certain renovations to be effected prior to the opening of the sectional title register, unless he arranges guarantees as referred to above[5]

### **Question 8 - Model answer** <sup>40</sup>

**[5]**

I would draw up a separate deeds of sale for each and every property and indicate the purchase price in each agreement as R150 000,00. Then the transfer duty payable in respect of each individual erf will be R0,00, as it falls below the threshold of R750 000,00 (The first R750 000,00 is exempt from the payment of transfer duty). It would not be wise to stipulate the purchase price as one global amount for all the erven together, namely R1 500 000. In such event transfer duty would be payable on so much of the purchase price as exceeds R750 000.

### **Question 9 - Model answer** <sup>41</sup>

**[12]**

9.1 I, the undersigned  
Mary Brown (formerly Smith)  
Identity number 611001 0031 08 4  
married out of community of property

**[2]**

9.2 I, the undersigned  
Mary Brown (formerly Smith)  
Identity number 611001 0031 08 4  
married in community of property to John Brown, with the exclusion of the community of property in respect of the hereinmentioned property as a result of the stipulations in the will of the late Jackson Smith dated 12 March 1980

**[2]**

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<sup>40</sup> Previously asked in Question 12 (Part 2) May 1994 for 8 marks.

<sup>41</sup> Similar questions were asked in Question 14 (Part 1) May 2011, Question 8 (Part 1) May 2008, Question 3 (Part 1) September 2005, Question 9 (Part 1) May 1997 and Question 13 (Part 2) May 1994 for 12 marks.

- 9.3 I, the undersigned  
Mary Smith  
Identity number 611001 0031 08 4  
unmarried [2]
- 9.4 We, the undersigned  
Mary Brown  
Identity number 311003 0831 001 and  
John Brown  
Identity number 301212 5487 08 8  
married in community of property to each other <sup>42</sup> [2]
- 9.5 I, the undersigned  
John Brown in my capacity as member and duly authorised thereto by virtue  
of a resolution by  
Brown Investments CC  
Registration number 1994/001345/23 [2]
- 9.6 I, the undersigned  
Jane Jones in my capacity as trustee appointed in the testamentary trust  
created in the estate of the late John Brown duly authorised thereto by virtue  
of Letter of Authority MT 159/2009 issued by the Master of the High Court at  
Pretoria on 2 January 2009. [2]

**Question 10 - Model answer** <sup>43</sup> [3]

Section 57 of the Deeds Registries Act provides that where all land that is mortgaged, is transferred from one person to another, and the transferor has not reserved for himself a limited right in such land, the transferee may be substituted as the mortgagor under the bond that is registered over such land.

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<sup>42</sup> Although the community of property is excluded in respect of a fiduciary, the fact that the fideicommissary heir has died has the effect that Mary is the registered owner of the property which is no longer subject to the fideicommissum, which means that she is not a fiduciary anymore and the property therefore falls with the joint estate.

<sup>43</sup> Previously asked in Question 14 (Part 2) May 1994 for 6 marks.

At a Registrars' Conference <sup>44</sup> it was decided that section 57 may also be utilized where only a share in land is to be transferred. The transferor may, however, not retain any share in the land. In other words, he must transfer all the shares that he has to another joint owner or a third party. Due to this resolution, the parties *in casu* can therefore invoke the provisions of section 57 and A can be substituted as mortgagor under the bond, without the necessity of cancelling the bond and thereafter re-registering a new bond in the name of A only.

**Question 11 - Model answer** <sup>45</sup>

**[2]**

A close corporation may only with the express, written; and prior obtained consent of all its members grant a loan, directly or indirectly, to any of its members and only if, after such assistance is given, the corporation's assets, fairly valued, exceed all its liabilities and if the corporation is able to pay its debts as they become due in the ordinary course of business.

**Question 12 - Model answer** <sup>46</sup>

**[2]**

The costs clause of a bond is also referred to as the "additional amount". The costs clause provides security for the payment by the mortgagor of the costs involved in preserving and realising the security. It further provides security for payment by the mortgagee on behalf of the mortgagor concerning insurance premiums, rates & taxes, costs of notice or bank exchange, etc. as well as legal costs incurred in claiming the amount owed in respect of the bond, etc. An additional amount is included in the bond in order to provide for the security of such costs and expenses.

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<sup>44</sup> RCR7/1994 and 7/2006.

<sup>45</sup> Previously asked in Question 15 (Part 2) May 1994 for 2 marks.

<sup>46</sup> Previously asked in Question 16 (Part 2) May 1994 for 3 marks.

In terms of **regulation 44A**, the conveyancer should ascertain the following facts:

- a) that all copies of the deeds or documents intended for execution and/or registration are *identical* at the date of lodgement;
- b) that, in the case of a **deed of transfer** or a **certificate of title** to land, all the applicable *conditions of title* contained in or endorsed upon the owner's copy of the title deed, together with any applicable proclaimed *township conditions, have been correctly brought forward* in that deed of transfer or certificate of title to land;
- c) that, in the case of a **power of attorney, application** or **consent** being signed by any person in his **representative capacity**, such as executor, trustee, guardian, curator, liquidator or judicial manager, from perusal of the documents evidencing such appointment exhibited to him -
  - i) *such person has in fact been appointed in that capacity*; and
  - ii) *is acting therein in accordance with the powers granted to him*; and
  - iii) *that any security required has been furnished to the Master*.
- d) that, in the case of a **power of attorney, application** or **consent** to the best of his knowledge and belief and after due enquiry has been made -
  - i) the **names, identity number or date of birth and marital status** of any **natural person** being a party to a deed or document; and
  - ii) in the case of any **other person** or a **trust**, its **name and registered number**, if any, are correctly reflected in that deed or document.
- e) that, in the case of a **power of attorney** (including a general power of attorney), **application** or **consent** -
  - i) being signed by any person in his **representative capacity**, the necessary **authority has been obtained for the signing of such document in a representative capacity** on behalf of a company, close corporation, church, association, society, trust or other body of persons or an institution; and
  - ii) the transaction as disclosed therein is **authorised by and in accordance with the constitution, regulations, founding**

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<sup>47</sup> Similar questions were asked in Question 4 (Part 2) September 2009 and Question 12 (Part 2) September 2007.

***statement or trust instrument*** of a trust, as the case may be, of any church, association, company, close corporation, society, trust or other body of persons, or any institution whether created by statute, including a foreign statute, being a party to such document.

- f) that, in the case of a **deed of transfer, certificate of registered title or mortgage bond** he accepts responsibility that the ***names, identity number or date of birth and marital status*** of any **natural person**, and in the case of any **other person** or a **trust**, have been brought forward correctly from the power of attorney or application relating thereto.

*(Any 5 of the above)*

**Certificate in terms of section 15B(3)(a)  
of the Sectional Titles Act 95 of 1986**

I, the undersigned

Gabriël Jacobus le Roux

in my capacity as practising conveyancer in Pretoria, hereby certify that in respect of the undermentioned property:

Unit 20 in the scheme Breakers

from

Ubuntu (Share Block) (Pty) Ltd

Registration number 1987/003422/07

to

Makhaya Ntini

Identity number 8020704 5054 081

unmarried

- 1 According to a sworn declaration or affidavit furnished by the share block company, the transferee has paid all the levies due to the share block company or has secured the payment thereof to the satisfaction of the share block company.
- 2 The share certificate, the signed transfer form and the written waiver of the occupancy rights have been delivered, as provided for in item 8(3) of Schedule I to the Share Blocks Control Act.
- 3 The body corporate has not been established and therefore no moneys are payable to such body corporate.<sup>49</sup>

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<sup>48</sup> Note that the question incorrectly refers to section 15(3)(b) in stead of section 15B(3).

<sup>49</sup> From the facts it is not clear whether the body corporate is established in other words, whether this is the first transfer or not. Therefore, another option that would also have been correct here is that "... that body corporate has certified that as at date of registration all moneys payable to the body corporate by the transferor in respect of the abovementioned unit has been paid."

- 4 No real right of extension of the scheme, as contemplated in section 25(1), has been registered in favour of the share block company.
- 5 The transferor is not a developer and a section 10 affidavit is not necessary.
- 6 Provision has been made for the separate rating of the said unit and a clearance certificate by the municipality is lodged herewith.

Signed at Pretoria on 15 September 2015.

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CONVEYANCER

**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