

Model Answers to the Conveyancing Examination

May 2012

Part 1

Self-Study Deeds Course

Question 1 - Model answer

[30]

1.1 Transfer duty is calculated according to the following scale:

R0-R600 000,00	=exempt	=R 0,00
R600 000,00-R1 000 000,00	=R400 000,00 x 3%	=R12 000,00
R1 000 000,00-R1 200 000,00	=R200 000,00 x 5%	=R10 000,00
TOTAL TRANSFER DUTY PAYABLE		R22 000,00

Pro rata occupational rental:

Occupational rental for October is R9 300,00. The rental per day is thus R9 300,00 ÷ 31 days = R300,00 per day. Occupational rental is from 1 October until the day before registration, in other words until 10 October, which means that the purchaser must pay occupational rental for 10 days. Thus: R300,00 x 10 days = R3000,00 occupational rental payable by the purchaser.

Pro rata levies:

The purchaser is liable for the payment of rates and taxes from 11 October (date of registration) until 31 October (date until which the seller has paid levies), in other words for 21 days (you have to include the date of registration). Levies for October 2011 is R620,00. R620 ÷ 31 days = R20 per day x 21 days = R420,00 payable by the purchaser. [6]

1.2 statements of account

Final statement of account for purchaser

Description	debit	credit
To purchase price	R1 200 000,00	
By occupational rental received on 1/10/2011		R9 300,00
To pro rata occupational rental from 1/10-10/10	3 000,00	
To administration fee of body corporate for levy figures	550,00	
By guarantee received		800 000,00
By balance of purchase price received		400 000,00
By interest on investment		4 295,90
By estimated transfer costs received		75 000,00
To our fee for transfer	13 500,00	
To VAT on our transfer fee	1 890,00	
To transfer duty	22 000,00	
To postage & petties	600,00	
To VAT on postage & petties	84,00	
To FICA fee	350,00	
To VAT on FICA fee	49,00	
To deeds office registration fee	650,00	
To pro rata levies - 11/10-31/10	420,00	
TOTAL	1 243 093,00	
Balance due to purchaser	45 502,90	
Balances	1 288 595,90	1 288 595,90

Balance due to you

R45 502,90

Final statement of account for the seller

Description	debit	credit
By purchase price		1 200 000,00
By pro rata occupation rental - 1-10 October 2011		3 000,00
To levies paid	2 480,00	
By pro rata levies until 10 October 2011 received from purchaser		420,00
To agent's commission	66 000,00	
To redemption sum to Union Bank	522 376,90	
To bond cancellation costs iro first covering bond	1 980,00	
To bond cancellation costs iro second covering bond	1 430,00	
TOTAL	594 266,90	
Balance due to Seller	609 153,10	
Balances	1 203 420,00	1 203 420,00

Balance due to you

R609 153,10

Question 2 - Model answer ¹

[25]

2.1 Documents to be lodged

- Existing **title deed** for the rights of the bondholder, in other words B8642/2009;
- copy of the **will**, certified by the Master and endorsed as accepted by him;
- As a bond is deemed to be movable, you do not need to lodge a section 42(1) of the Administration of Estates Act conveyancer certificate.

¹ The same question has been asked in September 2007 (Part 1), Question 3 for 20 marks.

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

I, the undersigned

Grant Strong

in my capacity as the Executor in the Estate of the late Brian Strong
duly authorised thereto by virtue of letters of Executorship No. 5009/2010
issued by the Master of the Kwa-Zulu Natal High Court, Durban dated 12
March 2010

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

Mortgage Bond

B8642/2009

passed by

Angela Botha

Identity number 500503 3020 081

Widow

in favour of

Brian Strong

Identity number 651204 5789 08 7

Unmarried

for the sum of

R200 000,00 (two hundred thousand rand) plus an
additional amount of R50 000,00 (fifty thousand
rand)

in terms of section 40(1)(b) of Act No. 66 of 1965 to the effect that the real rights in
the said mortgage bond shall be administered on behalf of the beneficiaries by the
trustees appointed in terms of the will dated 11 July 2000 of the said late Brian
Strong.

Signed at Durban this 9 May 2012.

Grant Strong

Consent to part payment

I, the undersigned,

Grant Strong in my capacity as trustee ² of the Brian Strong Family Trust
Registration number MT124/2010

duly authorised thereto by virtue of letters of authority issued by the Master of
the Kwa-Zulu Natal High Court, Durban on 23 May 2012

being the legal holder of -

Mortgage Bond
passed by

B8642/2009
Angela Botha
Identity number 500503 3020 081
Widow

in favour of

Brian Strong
Identity number 651204 5789 08 7
Unmarried

for the sum of

R200 000,00 (two hundred thousand rand) plus an
additional amount of R50 000,00 (fifty thousand
rand)

do hereby consent to the noting of a part payment being registered against the
abovementioned bond for the amount of R75 000,00 (seventy five thousand rand).

Signed at Durban on 12 November 2012.

As witnesses:

1 _____

2 _____

G Strong obo Brian Strong Family Trust
[10]

² Or if no name was allocated to the trust “trustee” can be followed with
“of the trust created in terms of the will in the estate of the Late Brian
Strong...”

Question 3 - Model answer

[15]

Subject to the following conditions:

- 1 Subject to a servitude area, measuring 25 (twenty five) square metres, for the purpose of using as a pump house, which servitude area is indicated by the figure abcd on subdivisional diagram S.G. number 800/2011, together the right to draw water from the adjacent dam on the servient tenement hereinmentioned and together with the right of access over the servient tenement for maintenance purposes in favour of -
The remaining extent of the Farm Mooinooi 123
Registration Division J.R., Province of Gauteng

Measuring 300,1457 (three hundred comma one four five seven) hectares

Held by Deed of Transfer T75458/2000
- 2 Subject to a servitude of aqueduct, 2 metres wide, the centre line of which servitude is indicated by the line efghj on subdivisional diagram S.G. number 800/2011 together with the right of access over the servient tenement for maintenance purposes in favour of -
The remaining extent of the Farm Mooinooi 123
Registration Division J.R., Province of Gauteng

Measuring 300,1457 (three hundred comma one four five seven) hectares

Held by Deed of Transfer T75452/2000

Question 4 - Model answer

[10]

- 4.1 Subject to a servitude of right of way, 8 (eight) metres wide, the exact route to be determined by the parties at a later stage in favour of -
The Farm Paradys 459
District Reitz, Province Free State
Measuring 98,4531 (ninety eight comma four five three one) hectares

Held by Deed of Transfer T4578/1980

[5]

- 4.2 Subject to a servitude of right of way, 3 (three) metres wide, running parallel and along the entire length of the northern boundary of the said Erf 4401 Durbanville, situate in the City of Cape Town, Division Cape, Province Western Cape, which northern boundary is indicated by the line AB on diagram S.G. number 7534/2005 in favour of -
Erf 4402 Durbanville
situate in City of Cape Town, Division Cape, Province Western Cape

Measuring 2 500 (two thousand five hundred) square metres

Held by Deed of Transfer T753/1996

[5]

Question 5 - Model answer

[15]

- 5.1 The purchaser confirms having been informed that the property is subject to a servitude of right of way, 3 (three) metres wide along the southern boundary thereof, in favour of The remaining extent of Erf 123 Moreletapark, Registration Division J.R., Province of Gauteng, measuring 1 200 (one thousand two hundred) square metres, which servitude has not been registered but which will be registered simultaneously with the registration of transfer of the property into the name of the purchaser. [5]
- 5.2 The servitude can be either registered -
- a) by means of a bilateral notarial deed entered into by and between the owner of the dominant tenement and the present or new owner of the property which is sold; or
 - b) directly in the deed of transfer. This is done by creating the condition in the power of attorney to pass transfer to the purchaser. The registered owner of the land in favour of which the servitude is to be registered must personally or through an agent appear before the registrar of deeds and accept the servitude in favour of the land. The purchaser must consent in writing to such servitude being embodied on the deed of transfer. [7]
- 5.3 The granting of the servitude over the land is an acquisition for transfer duty purposes. As no consideration is payable, transfer duty shall be calculated on the fair value of the servitude. In practice the parties normally agree on a nominal value on the servitude in their declaration. SARS always has the right to question this and place its own value thereon. [3]

CONVEYANCER
Le Roux G.J.

Application for Endorsement

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

We, the undersigned

- 1 Peter Fourie
in my capacity as executor in the estate of the late
Yvonne Loots
duly appointed by virtue of Letters of Executorship Number 234/2008 issued
by the Master of the North Gauteng High Court, Pretoria on 18 May 2008
and
- 2 Albert Loots
Identity number: 550122 5653 003
widower
in my personal capacity as surviving spouse of the deceased to whom I was
married in community of property

do hereby declare as follows, namely -

Whereas in terms of the joint will, dated 1 March 2000 of the late Yvonne Loots, who died on 3 January 2008 and surviving spouse, Albert Loots, married in community of property to each other, the parties massed their estates and bequeath their whole massed estate, including the hereinmentioned immovable property to the survivor of the subject to the following conditions:

- a) subject to a fideicommissum residui, upon the death of the survivor, in favour of the children of the said deceased and surviving spouse, born of their marriage; and
- b) subject the exclusion of the community of property of any marriage an heir may have entered into or may enter into;⁴

And whereas the said Albert Loots has adiated in terms of the will

Now therefore we apply 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 T100/2000 holding -

³ A similar question was asked in September 2008 (Part 1) Question 8.1.

⁴ If the inheritance is subject to conditions of the will, a brief reference to such conditions of the will is acceptable. The conditions do not have to be referred to extensively - (RCR14/2006).

Erf 35 Douglasville township
 Registration Division JO; Province of North West
 Measuring 2 000 (two thousand) square metres

to the effect that the surviving spouse, Albert Loots, is entitled to the above-mentioned property, one-half share by virtue of the marriage in community of property and one-half share by virtue of the joint will, dated 1 March 2000, of the late Yvonne Loots and surviving spouse Albert Loots as if he has taken formal transfer of the share of his deceased spouse, subject however, as regards the whole of such land, to the abovementioned special conditions contained in the aforesaid joint will.

Signed at Pretoria on this 20th day of October 2008

 Albert Loots

 Executor

6.2 Documents to be lodged at the deeds registry

- Current **title deed** for the land, T100/2000
- **transfer duty exemption certificate**
- **rates clearance certificate**
- **copy of the will**, certified by the Master and endorsed as accepted by him
- **section 42(1)** of the Administration of Estates Act conveyancer certificate
- **proof of adiation**, certified copy by the Master of the deed of adiation, duly attested, or a certificate by the Master or the conveyancer or an affidavit by the surviving spouse confirming that adiation took place [10]

- 6.3
- 1 Albert Loots
 Identity number: 550122 5653 003
 widower
 (½ (one half) share)
 - 2 Roberta Smith
 Identity number 891212 0654 08 7
 married in community of property to Louis Smith, with the exclusion of the community of property in respect of the hereinafter mentioned property as a result of the stipulations contained in the joint will dated 1 March 2000 of the late Yvonne Loots and surviving spouse Albert Loots
 (1/6 (one sixth) share)
 - 3 John Loots
 born on 11 March 1985
 unmarried (a mental patient)
 (1/6 (one sixth) share)

- 4 Adam Loots
Identity number 810912 5054 08 1
born on 12 November 1981⁵
unmarried
(1/6 (one sixth) share)

their heirs, executors, administrators or assigns
in full and free property -

Erf 35 Douglasville township
Registration Division JO; Province of North West
Measuring 2 000 (two thousand) square metres

[10]

Question 7 - Model answer⁶

[45]

7.1

Deed of Donation

MEMORANDUM of AGREEMENT made and entered into by and between -

Black Water Proprietary Limited
Registration number 2000/012498/10
(Incorporated in Australia)

herein represented by John Dear, in his capacity as director and duly
authorised thereto by virtue of a special resolution of the shareholders dated
2 February 2012
(Hereinafter referred to as the Donor)

and

The Methodist Church of Southern Africa
Constituted under Act 111/1978

herein represented by Hamilton Rutter, the presiding Bishop for the time
being of the South African Conference of the Methodist Church of Southern
Africa, duly authorised thereto by virtue of a resolution taken at Cape Town
on 6 February 2012
(Hereinafter called the Donee)

WHEREAS the Donor has agreed to donate to the Donee the immovable property
hereinafter referred to;

AND WHEREAS the Donee has agreed to accept the said donation from the
Donor;

NOW THEREFORE it is agreed as follows:

⁵ As the date of birth is incorrectly reflected in the person's identity
number, he must be described by the addition of his date of birth.

⁶ In examination paper of July 2004 (Part 1), Question 1.1 you
candidates were also expected to draft a deed of donation. See
Example 3A, in Part 1 of the Self-Study notes for Attorneys.

1 DONATION

The Donor hereby gives and donates to the Donee as a donation all the donor's rights, title and interest in the land and building or buildings in the scheme known as Toscana situated at Estcourt Township, City Council of Estcourt, which interest consisting of -

- 1 Section No 1 in extent 120 (one hundred and twenty) square metres as shown and more fully described on Sectional Plan No. SS.175/1996 and undivided share in the common property apportioned in accordance with the participation quota as endorsed on the said sectional plan
Held by of Certificate of Registered Sectional Title ST175/1996(1)(UNIT)
- 2 Section 2 in extent 120 (one hundred and twenty) square metres as shown and more fully described on Sectional Plan No. SS.175/1996 and undivided share in the common property apportioned in accordance with the participation quare as endorsed on the said sectional plan
Held by Certificate of Registered Sectional Title ST175/1996(2)(UNIT)
- 3 Section 3 in extent 120 (one hundred and twenty) square metres as shown and more fully described on Sectional Plan No. SS.175/1996 and undivided share in the common property apportioned in accordance with the participation quare as endorsed on the said sectional plan
Held by Certificate of Registered Sectional Title ST175/1996(3)(UNIT)
- 4 An exclusive use area described as carport P1 measuring 20 (twenty) square metres being as such part of the common property as shown and more fully described on Sectional Plan No. SS.175/1996
Held by Certificate of Real Right of Exclusive use areas SK2305/1996S
- 5 An exclusive use area described as carport P2 measuring 20 (twenty) square metres being as such part of the common property as shown and more fully described on Sectional Plan No. SS.175/1996\
Held by Certificate of Real Right of Exclusive use areas SK2305/1996S
- 6 An exclusive use area described as carport P3 measuring 20 (twenty) square metres being as such part of the common property as shown and more fully described on Sectional Plan No. SS.175/1996
Held by Certificate of Real Right of Exclusive use areas SK2305/1996S
- 7 The right to erect and complete from time to time within a period of 10 years for his personal account a further building or buildings on the specified portion of the common property as indicated on the plan referred to in section 25(2)(a) of the Sectional Titles Act, and to divided such building or buildings into a section or sections and common property, and to confer the right to exclusive use over a portion of such common property upon the owner or owners of one or more units in the scheme, as shown on Sectional Plan SS175/1996.

Held by Certificate of Real Right of Exclusive use areas SK2098/1996S

(Herein collectively referred to as the property)

2 TRANSFER

The Donor undertakes forthwith to complete and sign all such documents and perform such other acts as may be necessary to enable transfer of the units and cession of the exclusive use areas and real right of extension set out in Clause 1 hereof, to be registered in the name of the Donee; and promises to free and warrant the said property thus transferred, and to clear it from all encumbrances and hypothecations according to law. The property is donated voetstoots.

The costs of transferring or ceding the said property to the Donee shall be at the Donee's expense which shall include the cost of releasing the property from the operation of the existing bond; any donations tax; and transfer duty, VAT and capital gains tax, if any. All risks in and to the said property shall pass on registration of transfer thereof into the Donee's name.

3 ACCEPTANCE

The Donee hereby gratefully accepts the donation aforesaid subject to the abovementioned conditions as well as the following special conditions imposed by the Donor, namely -

- 3.1 The property may not be used for any other purposes other than ecclesiastical purposes, without the written consent of the Donor;
- 3.2 The Donee, or its successors in title, may not alienate the property without first offering it to the Donor.

Signed at Cape Town on 20 March 2012 in the presence of the undersigned witnesses.

As witnesses:

1 _____

2 _____

John Dear

As witnesses:

1 _____

2 _____

H Rutter

Power of attorney to pass transfer

I, the undersigned

John Dear, in my capacity as director and duly authorised thereto by virtue of a special resolution of the shareholders of
Black Water Proprietary Limited
Registration number 2000/012498/10
(Incorporated in Australia)

do hereby nominate, constitute and appoint Gabriël Jacobus le Roux and/or Erinda Frantzen with the power of substitution to be my lawful attorney and agent and to appear before the Registrar of Deeds at Cape Town and there and then to declare that -

Black Water Proprietary Limited, the developer of the scheme known as Toscana No.SS.175/1996, has in terms of Section 34(3) of the Sectional Titles Act, 95 of 1986, donated the whole of its interest in and to the said scheme, together with exclusive use areas P1 to P3 and a real right of extension over the said scheme, reserved in terms of section 25, which form part of the common property, to the undermentioned transferee, which donation was duly accepted by the donee on 20 March 2012

Now therefore the appearer, in his capacity as aforesaid did by these presents cede and transfer to and on behalf of -

The Methodist Church of Southern Africa

"All the right, title and interest in the land and building or buildings in the scheme known as Toscana situated at Estcourt Township, City Council of Estcourt, which interest consisting of

- 1 Section No 1 in extent 120 (one hundred and twenty) square metres as shown and more fully described on Sectional Plan No. SS.175/1996 and undivided share in the common property apportioned in accordance with the participation quota as endorsed on the said sectional plan

Held by virtue of Certificate of Registered Sectional Title
ST175/1996(1)(UNIT)⁷

⁷ Each unit in the scheme must be stated in a separate paragraph.
Please note the foot notes at the bottom of Form H.

- 2 Section 2 in extent 120 (one hundred and twenty) square metres as shown and more fully described on Sectional Plan No. SS.175/1996 and undivided share in the common property apportioned in accordance with the participation quare as endorsed on the said sectional plan

Held by virtue of Certificate of Registered Sectional Title
ST175/1996(2)(UNIT)

- 3 Section 3 in extent 120 (one hundred and twenty) square metres as shown and more fully described on Sectional Plan No. SS.175/1996 and undivided share in the common property apportioned in accordance with the participation quare as endorsed on the said sectional plan

Held by virtue of Certificate of Registered Sectional Title
ST175/1996(3)(UNIT)

Subject to the following conditions contained in the deed of donation entered into between the transferor and transferee dated 20 March 2012, namely -

- 1 The property may not be used for any other purposes other than ecclesiastical purposes, without the written consent of the Donor;
- 2 The Donee, or its successors in title, may not alienate the property without first offering it to the Donor.

Signed at Cape Town on 15 May 2012

As witnesses

1 _____

2 _____

John Dear [15]

- 7.3 The exclusive use areas as well as the real right of extension must be ceded by means of a bilateral notarial deed entered into by and between Black Water Proprietary Limited and the Methodist Church - (section 34(3) of the Sectional Titles Act). [2]

7.4 **Documents to be lodged at the deeds Registry**

- Current **title deeds** of three units
- concept **deed of transfer**
- **power of attorney** to pass transfer
- **transfer duty** receipt or exemption certificate
- **rates clearance certificate** in respect of the sectionalized property from the local authority - (section 34(4)(a)(i))
- **section 34(4)(b)** conveyancer certificate
- **bilateral notarial deeds of cession** in respect of the exclusive use areas and real right of extension

- current **title deeds** of all the exclusive use areas and real rights of extension
- **transfer duty** receipts or exemption certificates for the exclusive use areas and real right of extension (if it does not form part of the transfer duty exemption certificates for the units)
- **rates clearance certificates** in respect of the exclusive use areas and the real right of extension, if not included in the clearance certificates for the units.⁸

[8]

Question 8 - Model answer ⁹

[30]

8.3 *Documents to be lodged:*¹⁰

- 1 **application for subdivision**
- 2 *two copies* of the **sectional plan of subdivision**
- 3 existing **deed of transfer** ST22/2002
- 4 existing **mortgage bond** SB44/2002 in favour of Hel Bank Limited
- 5 **consent by the mortgagee** (Hel Bank Limited)
- 6 **certificates of registered sectional title**¹¹ in respect of sections 21 and 22

[5]

8.4 *Requirements for a valid monogamous customary marriage:*

- 1 both spouses must be over 18 years of age
- 2 both must consent to be married to each other under customary law
- 3 the marriage must be negotiated and celebrated in accordance with customary law.

[4]

⁸ Section 118 of the Local Government Property Rates Act 6 of 2004, a clearance certificate must also be lodged in respect of a right registered against immovable property. In RCR65/2008 it was decided that such a clearance certificate need only be lodged upon the cession of a limited real right and not upon the creation thereof.

⁹ The same question has been asked in examination paper of September 2007 (Part 1), question 2 for thirty marks.

¹⁰ Section 22(2) prescribes the documents to be lodged. They are also listed in the notes of the Centre for Conveyancing Practice, part 2, p. 1-45.

¹¹ Prepared in accordance with **Form P** in the regulations to the Sectional Titles Act.

**Application under section 22(1)¹²
of the Sectional Title Act 95 of 1986**

We the undersigned

Jo Dube

Identity number: 550911 5203 08 0 and

Lucy Dube

Identity number: 680111 0062 08 7

married in community of property to each other¹³

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 the provisions of section 22(1) of the Sectional Titles Act, 1986, in respect of section No 21 and Section No. 22, formerly section No. 1 as shown and more fully described on sectional plan No. SS 11/2000 in the scheme known as Bella Bella in respect of the land and building or buildings situate at Bella Bella Township, Local Authority Bella Bella local municipality and held under Deed of Transfer ST22/2002.
- 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 Bella Bella on 9 May 2012.

Jo Dube

Lucy Dube [10]

¹² In accordance with **Form O** of the regulations to the Sectional Titles Act 95 of 1986.

¹³ As Jo and Lucy, who are not partners in any other customary marriage, were married after the commencement of the Customary Marriage Act 120 of 1998 (which act commenced on 15 November 2000) and no reference is made to an antenuptial agreement that was concluded prior to such marriage, the legal consequences of the parties' marriage are one of in community of property.

Form AM

CONVEYANCER
Frantzen E**Consent**

I, the undersigned

Jacob Hendrik Pierneef

in my capacity as signing official of Hel Bank Limited, Registration Number 1980/000123/06, duly authorised thereto by virtue of a resolution of the board of directors of the said bank, the legal holder of the undermentioned mortgage bond, namely:

Mortgage bond Number SB44/2002
 passed by Jo Dube
 Identity number: 550911 5203 08 0
 Unmarried

in favour of Hel Bank Limited, No: 1980/000123/06
 for the sum of R900 000,00 (nine hundred thousand rand)
 and the additional amount of ¹⁴ R180 000,00 (one hundred and eighty thousand rand)

do hereby consent to:

- 1 the registration of the sectional plan of subdivision and subdivision of section 1 into sections to be known as sections 21 and 22 in the scheme Bella Bella, subject to the abovementioned bond in accordance with Sectional Plan S.G D456/2012; and
- 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 1 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 section plan.

Signed at Pretoria on 20 May 2012.

As witnesses:

1

2

_____ [9]

¹⁴ Generally the additional amount in a mortgage bond is 20% of the capital amount.

8.5 No. Section 21 provides that the consent of the trustees of the body corporate must be obtained before submitting the draft sectional plans to the Surveyor-General. At a Registrar's Conference ¹⁵ it was therefor resolved that it is not necessary to lodge the consent of the trustees of the body corporate on the registration of the sectional plan of subdivision or consolidation. [2]

TOTAL [200]

¹⁵ Registrar's Conference Resolution 18 of 1997.

Model Answers to the Conveyancing Examination

May 2012

Part 2

Self-Study Deeds Course

Question 1 - Model answer

[42]

1.1 We, the undersigned

- 1 Sean Connery
Identity number 760904 5025 08 1
unmarried
(as bare dominium owner)

- 2 Peter Connery
Identity number 800712 5535 08 2
married in community of property to Rachel Connery ¹⁶
(as usufructuary)

[4]

1.2 We, the undersigned

- 1 Gert Brits
Identity number 601212 5489 08 7
unmarried
(as fiduciary)

- 2 Piet Brits
Identity number 840115 5789 08 2
unmarried
(as fideicommissary)

- 3 Jan Brits
Identity number 860329 5321 08 8
unmarried
(as fideicommissary)

[6]

¹⁶ The community of property is excluded by common law in respect of a usufructuary.

- 1.3 We, the undersigned,
Vuzikele Khumalo and Moleme Khumalo in our capacity as parents and
natural guardians of -
Vuzi Khumal
born on 5 April 2005
a minor ¹⁷ [2]
- 1.4 I, the undersigned
Max Behr
Identity number 970401 5067 08 7
a minor
duly assisted by my parents and natural guardians John Behr and Rosemary
Behr [4]
- 1.5 I, the undersigned
Irmin Henkel, in my capacity as curator in the estate of the mental patient
Joe Johnson
Identity number 751205 5963 08 8
unmarried
duly authorised thereto by virtue of letter of authority issued by the Master of
the Cape of Good Hope High Court, Cape Town, on 16 April 2012 [3]
- 1.6 We, the undersigned
Irmin Henkel duly authorised thereto by virtue of letter of authority issued by
the Master of the Cape of Good Hope High Court, Cape Town on 2 March
2012 in my capacity as curator in the estate of the mental patient
Joe Johnson
Identity number 751205 5963 08 8
and
Mary Johnson
Identity number 780101 0089 08 8
married in community of property to each other ¹⁸ [4]

¹⁷ As Vuzi has turned 7 on 5 April 2012 and the examination paper was written on 9 May 2012, Vuzi can sign himself and be assisted by his parents. However, since he is still very young, it is preferable that his parents still sign on his behalf. Remember that the parents may still sign on behalf of a minor who is 7 years or older, but younger than 18 years.

¹⁸ He can also be described as -
“...Joe Johnson
Identity number 751205 5963 08 8
married in community of property to Mary Johnson”
A separate consent in terms of section 15(2) of the Matrimonial Property Act, signed by Mary and duly attested must then be lodged.

- 1.7 I, the undersigned
Jacques Conradie in my capacity as Sheriff of the Magistrates Court of
Germiston, duly authorised thereto by virtue of a writ issued by the clerk of
the said court at Germiston on 20 March 2012 [3]
- 1.8 We, the undersigned
Peter Trustee and Eric Trustee
in our capacity as trustees of the body corporate for the scheme known as
Highfly, SS457/2010, duly authorised thereto by virtue of a unanimous ¹⁹
resolution of the body corporate dated 20 April 2012 [4]
- 1.9 We, the undersigned
- 1 Warren Buffet, in my capacity as nominee of Best Bank Limited,
Registration number 1990/021546/06, and as such the executor in the
estate of late Susan Sharandon, estate number 234/2012
duly authorised thereto by virtue of letter of executorship issued by the
Master of the South Gauteng High Court, at Johannesburg on 31
March 2012
 - 2 Wayne Sharandon
Identity number 551203 5942 08 7
unmarried, in my personal capacity as surviving spouse of the
deceased to whom I was married in community of property [4]
- 1.10 I, the undersigned,
Flo Douglas, in my capacity as executor in the estate of the late Kirk
Douglas, estate number 458/2012, duly authorised thereto by virtue of letter
of executorship issued by the Master of the Kwa-Zulu Natal High Court,
Durban on 16 March 2012 [4]
- 1.11 I, the undersigned
Roger Black, in my capacity as representative in the estate of late Lily White
duly authorised thereto by virtue of letter of appointment 1245/2011 issued in
terms of section 18(3) of the Administration of Estates Act 66 of 1965, issued
by the Master of the North Gauteng High Court, Pretoria on 23 February
2012 [4]

Question 2 - Model answer [20]

- 2.1 Requirements for a valid pre-incorporation contract are -
- a) it must be in writing;
 - b) it had to be entered into before the company came into existence

¹⁹ A unanimous resolution is required by section 17 of the Sectional Titles Act, for the alienation of a portion of the common property in the scheme.

- c) it must be entered into between a third party and a person, as agent, who purports to act in the name or on behalf of the company. [4]
- 2.2 The board of directors. [1]
- 2.3 It must be ratified or rejected within three months from the date of incorporation of the company. [1]
- 2.4 The company will be regarded as having ratified the pre-incorporation contract. [1]
- 2.5 According to section 20(7) of the Companies Act, a person dealing with the company in good faith, may presume that the company, in making any decision in the exercise of its powers, has complied with all the formal and procedural requirements in terms of the Act, the company's Memorandum of Incorporation and any rules, unless the person knew or reasonably ought to have known of any failure by the company to comply with any requirement. The turquand rule is retained by the new Companies Act of 2008. [6]
- 2.6 **Requirements for disposal of all the assets of a company:**
- a) The disposal must be approved by the shareholders of the company by means of a special resolution
- b) The notice of the shareholders' meeting -
- i) must be delivered within the prescribed time and in the prescribed manner to each shareholder of the company;
- ii) must include or be accompanied by written summary of the precise terms of the transaction to be considered at the meeting and the provisions of section 115 and 164
- c) the company must have satisfied all the other requirements set out in section 115, to the extent that those requirements are applicable to the disposal by that company. [7]

Question 3 - Model answer [8]

- 3.1 The joint estate of the late Sandy Beukes estate number 154/2012 and surviving spouse Johan Beukes Identity number 620113 5321 0 8 1 unmarried their heirs, executors, administrators or assigns [2]
- 3.2 The joint estate of the late Sandy Beukes estate number 154/2012 and

later deceased spouse Johan Beukes
estate number 162/2012
their heirs, executors, administrators or assigns [2]

3.3 The joint estate of the late Sandy Beukes
estate number 154/2012 and
the late Johan Beukes
estate number 155/2012
their heirs, executors administrators or assigns [2]

3.4 The joint estate of the late Sandy Beukes
estate number 154/2012 and surviving spouse
Johan Beukes
identity number 620113 5321 0 8 1
now married in community of property to Sarah Beukes
their heirs, executors, administrators or assigns [2]

Question 4 - Model answer [10]

4.1 Three legal exceptions that may not be waived in credit agreements where the National Credit Act is applicable, are -

- *Non numeratae pecunae*
This is an exception which may be taken by a debtor on the ground that, although he has signed an acknowledgement of debt, the amount thereof was not paid over.
- *Non causa debiti*
This is an exception taken to the effect that there is no causa or reason for the obligation or debt.
- *Revision of accounts, errore calculi, no value received*
This is an exception taken to the effect that the outstanding balance which the creditor avers the debtor owes him, is incorrectly calculated. [6]

4.2 The waiver of the legal exceptions will not be binding on the debtor and will be regarded as an unlawful provision. [2]

4.3 a) No.
b) No. [2]

It can be re-vested in the insolvent-

- *Automatic rehabilitation*

An insolvent is automatically rehabilitated ²¹ after a period of 10 years since his sequestration, if he has not been rehabilitated by the court before such time. No registration act in the deeds registry is necessary, as the Registrar of Deeds will of his own accord remove from his records any sequestration order after elapse of ten years.

- ▶ *An offer of composition* (that must be accepted by his creditors) ²²

In this instance Section 58(2) of the Deeds Registries Act must be invoked.

The insolvent may not deal (transfer mortgage or otherwise deal) with any property that has previously vested in the trustee unless the property has been restored to him in terms of section 58(2), by means of an endorsement.

The following documents must be lodged in the deeds registry, namely:-

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

- ▶ *Court Order*

If both the trustee and the creditors, with full knowledge that the property has vested in the trustee, do not lay any claim to such property, the court, on

²⁰ Similar questions were asked in May 2008 (Part 2), Question 3 for 6 marks and May 2009 (Part 2), Question 10 for 6 marks.

²¹ Section 127A of the Insolvency Act 24/1936.

²² Section 119 of the Insolvency Act.

rehabilitating the insolvent or after rehabilitation may make an order declaring the rehabilitated insolvent entitled to the property. The rehabilitated insolvent may not deal (transfer, mortgage or otherwise deal) with such property unless it is transferred by the trustee to the rehabilitated insolvent by means of a deed of transfer in terms of section 58(1) of the Deeds Registries Act.

Question 6 - Model answer

[8]

Section 25(3) of the Deeds Registries Act stipulates that when the identity of all such children has been established, application may be made to the registrar to make an endorsement on the title deed or bond setting out their names.

Documents for lodgement in the deeds registry

- 1 **Application** in writing, brought by or on behalf of all the children. If some of them are minors or incompetent in another way, they should be assisted, or where necessary the application should be brought by their lawful representatives. The full names of the children and their identity numbers or dates of birth must be stated.
- 2 **Documents in corroboration of the facts.** These would include documents proving that the identity of all the children has been established, that no further children can be born. Depending on the circumstances a certificate of next of kin or court order must be lodged. A registrar will only accept a court order that a woman cannot procreate any further children.
- 3 **Title deeds** to be endorsed
- 4 If the property is mortgaged, the mortgagee's consent is not required and the bond needs not be lodged.
- 5 No clearance certificate needs to be lodged

TOTAL: [100]

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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