

# Model Answers to the Conveyancing Examination

## September 2013

### Part 1

### Self-Study Deeds Course

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

[25]

##### 1.1 Purchaser: Mad Max

Paid	Purchase Price	800 000,00	
Received	Deposit on purchase price		110 000,00
Received	Guarantees for purchase price		684 000,00
Paid	Our fee for registration of transfer	8 400,00	
Paid	VAT thereon	1 176,00	
Paid	Deed Office Fees	400,00	
Paid	Transfer Duty <sup>2</sup>	6 000,00	
Received	Transfer Duty <sup>3</sup>		15 000,00
Paid	Occupational rental 1/02/2013-30/4/2013 (3 months x R8000)	24 000,00	
Paid	Levies 1/02/2013-30/6/2013 (5 months x R1000)	5 000,00	

<sup>1</sup> This question was also asked in May 2008 (Part 1), Question 1 for 25 marks. Only the dates were updated in this question.

<sup>2</sup> The first R600 000,00 of the purchase price is exempt from the payment of transfer duty. Transfer duty in this instance is calculated by multiplying the amount above R600 000,00 with 3%. Thus: R200 000,00 x 3% = R6 000,00. Nothing of the purchase price is above R1 000 000,00 to be multiplied with 5%.

<sup>3</sup> Note that this amount in the question ought to be only R6 000,00, as the transfer duty is only R6 000,00. The examiner forgot to adapt the question that was taken from May 2008 (Part 1), Question 1, to make provision for the new transfer duty scales of 2013.

Paid	Admin fee: Levy clearance certificate	1 000,00	
Paid	Electrical Compliance Certificate	1 500,00	
Total		847 476,00	
	<b><i>balance owed by you</i></b>	<b><i>(38 476,00)</i></b>	
Balances		<b>809 000,00</b>	<b>809 000,00</b>

[20]

- 1.2** I will not proceed with registration, but immediately contact the purchaser and advise him that the matter is on prep and fax the reconciliation statement through to him wherein it is indicated that his payments to date are inadequate to cover the transfer costs. I will inform him that he must immediately pay the shortfall into our trust account (electronically or in cash) so that I would know that the said amount will be immediately available. I would arrange with our prep clerk to make arrangements for holding the transaction over on preparation until such time as I notify her that she can proceed with letting it go to execution. I would advise the bond attorneys, bond cancellation attorneys, seller and purchaser that the matter is being held over. I can proceed to register the transaction once I have received the shortfall.

[5]

## **Question 2 - Model answer** <sup>4</sup>

**[35]**

- 2.1.1 The joint estate of the Late Mad Max  
Estate Number 1234/2013  
and his surviving spouse  
Cecilia Max  
Identity Number 430615 0910 00 8  
widow  
their heirs, executors, administrators or assigns

[5]

- 2.1.2 Portion 1 of Erf 12 Douglasdale Township  
Registration Division J.R., Province of Gauteng  
Measuring 800 (eight hundred) square metres

As will appear from annexed diagram S.G. No 3/2006 and held by Deed of Transfer T1/2005 <sup>5</sup>

[5]

---

<sup>4</sup> A similar question was asked in May 2008 (Part 1), Question 2, for 50 marks.

<sup>5</sup> As this is a newly surveyed piece of land that has never formerly been registered as an entity on its own, form TT is used.

CONVEYANCER  
Gabriël Jacobus le Roux

## Power of Attorney and Agreement to Partition Land <sup>6</sup>

We, the undersigned,

- 1 Ann Penn  
Identity Number 510701 0017 08 8  
married to George Penn, which marriage is governed by the laws of  
Zambia, duly assisted by my spouse as far as needs be
- 2 Mavis Ball  
Identity Number 470107 0012 08 3  
divorced

being the joint owners of -

The remaining Extent of Erf 12 Douglasdale Township  
Registration Division J.R., Province of Gauteng  
Measuring 1 200 (one thousand two hundred) <sup>7</sup> square metres

Held by Deed of Transfer T1/2005 <sup>8</sup>

do hereby declare that we have agreed to partition the said property by subdividing it according to our respective interest therein and allocating to each of us a defined portion thereof as set out hereunder

AND that we hereby nominate constitute and appoint

Gabriel Jacobus le Roux and/or Erinda Frantzen

with power of substitution to be my lawful attorney and agent to transfer the sub-divided portions to us in severalty as follows, namely:-

---

<sup>6</sup> See **Examples 8 A and 8 E** in Part 4 of Self-Study Deeds Course for Attorneys.

<sup>7</sup> The total extent of Erf 12 Douglasdale (2 000 sqm) less the extent of portion 1 (800 sqm) gives 1 200 square metres.

<sup>8</sup> The remaining extent and portion 2 are still held by this deed of transfer.

1 Allocated to Mavis Ball  
Identity Number 470107 0012 08 3  
divorced

the following property, namely -

Portion 2 of Erf 12 Douglasdale Township  
Registration Division J.R., Province of Gauteng  
Measuring 600 (six hundred) square metres

As shown on diagram S.G. No 4/2006 and held by Deed of  
Transfer T1/2005

2 Allocated to Ann Penn  
Identity Number 510701 0017 08 8  
married which marriage is governed by the law of Zambia

the following property, namely -

Remaining Extent of Erf 12 Douglasdale Township  
Registration Division J.R., Province of Gauteng  
Measuring 600 (six hundred)<sup>9</sup> square metres

Held by Deed of Transfer T1/2005<sup>10</sup>

And we do hereby declare that neither we nor any other persons on our behalf  
received or paid any consideration or any other form of compensation in respect of  
the partition and simultaneous transfer of the property.

SIGNED at Pretoria on 11 September 2013

As witnesses:

1 \_\_\_\_\_

\_\_\_\_\_  
Ann Penn duly assisted  
by my spouse

2 \_\_\_\_\_

\_\_\_\_\_  
George Penn

\_\_\_\_\_  
Mavis Ball  
[25]

---

<sup>9</sup> The extent of the remainder and the extent of portion 2 (1 200 sqm) less the  
extent of portion 2 of Erf 12 Douglasdale (600 sqm) gives 600 square metres.

<sup>10</sup> There is no diagram for the remaining extent. The mother diagram less  
portions 1 and 2 give the remaining extent.

CONVEYANCER  
Gabriël Jacobus le Roux

**Application in terms of Section 40  
of the Deeds Registries Act 47 of 1937 <sup>12</sup>**

I, the undersigned

Alice Wonderland, in my capacity as trustee and duly authorised thereto by virtue of a resolution by the Trustees of the ABC Trust

Registration number IT8183/2005

acting under letters of appointment issued by the Master of the Western Cape High Court, Cape Town on 3 March 2005

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

1) Erf 123 Belville  
situated in the City of Cape Town, Cape Division, Province Western Cape

in extent 1000 (one thousand) square metres

Held by deed of transfer T1/2007

and

2) Erf 124 Belville  
situated in the City of Cape Town, Cape Division, Province Western Cape

in extent 1 500 (one thousand five hundred) square metres

Held by deed of transfer T 2/2007

which properties on consolidation will be known as -

Erf 625 Belville

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

in extent 2 500 (two thousand five hundred) square metres

as will appear from diagram S.G. No. 55/2008.

Signed at Cape Town on this 11 September 2013.

\_\_\_\_\_  
On behalf of the trustees of ABC Trust [5]

<sup>11</sup> Save for one detail, the exact same question was asked in May 2008 (Part 1), Question 3 for 40 marks.

<sup>12</sup> See **Example 9 B** in Part 4 of Self -Study Deeds Course for Attorneys.

**Form O**

CONVEYANCER  
Gabriël Jacobus le Roux

**CERTIFICATE OF CONSOLIDATED TITLE**<sup>13</sup>

WHEREAS -

The trustees of the ABC Trust  
Registration number IT8183/2005  
have applied for the issue to them of a Certificate of Consolidated Title under the provisions of Section 40 of the Deeds Registries Act, 1937,

AND WHEREAS they are the registered owners of:

- 1) Erf 123 Belville  
situated in the City of Cape Town, Cape Division, Province Western  
Cape  
Held by deed of transfer T1/2007  
and
- 2) Erf 124 Belville  
situated in the City of Cape Town, Cape Division, Province Western  
Cape  
Held by deed of transfer No. 2/2007

which have been consolidated into the land hereinafter described.

---

<sup>13</sup> This certificate is drafted in accordance with form O. Also see **Example 9 D** in Part 4 of Self-Study Deeds Course for Attorneys.

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

The trustees of the ABC Trust  
Registration number IT8183/2005

their successors in office or assigns, are the registered owners of

Erf 625 Belville

situated in the City of Cape Town, Cape Division, Province Western Cape in extent 2 500 (two thousand five hundred) square metres as will appear from diagram S.G. No. 55/2008 annexed hereto.

The property held hereunder is subject to the following conditions:

- 1 No trade or business in wine, spirits or beer shall be carried on on the said property. <sup>14</sup>
  
- 2 The former Erf 123 Belville township depicted by the figure AabD on the attached diagram SG No. 55/2008 is subject to the following conditions: - <sup>15</sup>
  - a) Subject to a 2 metres wide servitude for municipal purposes in favour of the Belville Local Municipality together with ancillary rights, the centre line of which servitude is indicated by the line vx on annexed diagram S.G. No 55/2008 as will more fully appear from Notarial Deed No. K44/2006S, with diagram annexed thereto.
  - b) The property may not be transferred without the written consent of the Local Authority. <sup>16</sup>
  
- 3 The former Erf 124 Belville township depicted by the figure aBCb on the attached diagram SG No. 55/2008 is subject to the following condition:-  
Subject to a 5 metres <sup>17</sup> wide right of way servitude in favour of

---

<sup>14</sup> As the two individual components are subject to the same condition, this condition is quoted only once, without any qualification.

<sup>15</sup> Or - "That portion of the property, indicated by the figure AabD on diagram S.G. No. 55/2008 is subject to the following conditions:..."

<sup>16</sup> As these two conditions (2 (a) & (b)) are only applicable to one of the components and not both, they must be qualified with reference to the figure on the consolidation diagram whereby the component is indicated.

<sup>17</sup> You will note that reference is made to a 2 metre wide servitude on the consolidation diagram in stead of a 5 metre wide servitude as referred to in the title condition. In practice you will have to ascertain which one of the two is incorrect and ensure that it is corrected before you lodge your transaction in the deeds office. Where this same question has been asked in

Highbrow Holdings Proprietary Limited, the centre line of which servitude is indicated by the line BC on annexed diagram S.G. No. 55/2008, as will more fully appear from Notarial Deed No. K100/2006S, with diagram annexed thereto <sup>18</sup>

And further subject to such conditions as are mentioned or referred to in the aforesaid deeds.<sup>19</sup>

AND THAT by virtue of these presents, the said trustees of the ABC Trust, their successors in office or assigns, now is and henceforth shall be entitled thereto conformably to local custom, the State, however, reserves its rights.

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

Thus done and executed at the office of the Registrar of Deeds at Cape Town on this \_\_\_\_ day of \_\_\_\_\_ .

---

Registrar of Deeds  
[30]

---

May 2008, it was indicated that the servitude reflected on the diagram is also 5 metres wide. Thus it is presumed that an error occurred in the question when it was repeated in September 2013.

<sup>18</sup> The same principle as in footnote 16 is also applicable here.

<sup>19</sup> This general conditional clause is not applicable in the deeds registries for Cape Town, Pietermaritzburg, Vryburg and Bloemfontein.



## Question 4 - Model answer <sup>20</sup>

[10]

- 4.1 According to a Registrars' Conference Resolution,<sup>21</sup> section 27(4)(b) and 27(4)(c) provide the procedure to be followed, namely:-  
If the holder of the real right of exclusive use area is no longer a member of the body corporate, the exclusive use area vests in the body corporate (free from any mortgage bond). Such a holder will cease to be a member of the body corporate when he ceases to be the owner of a unit in the scheme. The body corporate must thereafter apply at the Registrar of Deeds for the issue of a certificate of real right of exclusive use area whereafter the exclusive use area can be ceded to the latest owner of the unit. [6]
- 4.2 Yes, it will make a difference. The holder of the real right is still a member of the body corporate as he is still the owner of a unit in the scheme and therefor the real right still vests in him and not in the body corporate. The provisions of section 14 read in conjunction with section 33 of the Deeds Registries Act must be adhered to. Cession of the exclusive use area should therefor then take place from A to B to C until the last person entitled to the exclusive use area - (section 14). If a person is unable to procure registration of the cession of exclusive use area, he may apply to court by petition for an order authorizing the registration (cession) in his name of such property (exclusive use area) - Section 33. [4]

---

<sup>20</sup> Save for different dates, the exact same question was asked in May 2008 (Part 1), Question 4 for 10 marks.

<sup>21</sup> RCR49/2005, as amended by RCR2/2006. It is not necessary to quote the number and year of the resolution.

## Question 5 - Model answer

5.1

[25]

Prepared by me

CONVEYANCER  
Gabriël Jacobus le Roux

### **Power of Attorney to pass transfer**<sup>22</sup>

We, the undersigned,

- 1 Bo Brummel  
Identity Number 750106 5054 08 8  
married out of community of property  
(as bare dominium owner)
  
- 2 John Brummel  
Identity Number 451018 5092 00 1  
married, which marriage is governed by the laws of Engalnd  
(as usufructuary)<sup>23</sup>

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 said Transferors have truly and legally on 15 April 2007 sold their respective interests in undermentioned property to the undermentioned transferee for the amount of R1 800 000,00 (one million eight hundred thousand rand), subject to the conditions as are more fully set out hereunder

NOW THEREFORE we hereby authorise the appearer to transfer to

The trustees of the Bella Trust  
Registration number IT 123/2005

the following property, namely:

Portion 1 of the Farm Rome 333  
Registration Division I R, Province Gauteng  
Measuring 1 000,0000 (one thousand comma nil nil nil nil) hectares  
As will appear from diagram S.G. No 321/2005 and held by Deed of Transfer T4321/1996

---

<sup>22</sup> See Question 6 of May 2007 (Part 1), Question 6 of September 2007 (Part 1) and Question 5 of May 2008 (Part 1) for 25 marks.

<sup>23</sup> In terms of section 17(6) of the Deeds Registries Act the assistance of the spouse is required of people where the legal consequences of their marriage is governed by the laws of another country, unless the Registrar deems it unnecessary (in terms of the Deeds Registries Act or on any other grounds). The community of property is however excluded by common law in respect of a usufructuary. Therefor it is submitted that the assistance of the spouse of the usufructuary is not necessary.

Subject to the following conditions set out in the deed of sale dated 15 April 2007, namely -

- 1 Subject to a right of pre-emption in favour of Bo Brummel, Identity Number 750106 5054 08 8, married out of community of property and John Brummel, Identity Number 451018 5092 001, married which marriage is governed by the laws of England. When first offering the herein mentioned property to the said transferors, such offer is to remain open for at least 5 (five) days. Should the property at any time be offered to a third party at a lower price than that offered to the said transferors, it may only be done after first having offered it again to the transferors for that lower price. In such an instance the provisions of this paragraph shall also apply to such offer.
  
- 2 Subject to a servitude of right of way, 10 metres wide, the centre line of which servitude is indicated by the line ab on diagram S.G. No. 321/2005, in favour of  
The Remaining Extent of the Farm Rome 333  
Registration Division I.R., Province of Gauteng  
Measuring 1000,0000 (one thousand comma nil nil nil nil) hectares  
Held by Deed of Transfer T4321/1996

SIGNED at Pretoria on 11 September 2013

As witnesses:

1. \_\_\_\_\_ Bo Brummel
  2. \_\_\_\_\_ John Brummel  
[20]
- 5.2 R61 000,00 <sup>24</sup> [2]

- 5.3 Bo Brummel must first obtain the consent of the High Court <sup>25</sup> (in terms of section 80*bis* of the Administration of Estates Act 66 of 1965) for the sale of the property. An application to the high court must therefor first be brought for such consent and a certified copy of the court order must be lodged together with the rest of the transfer documentation in the deeds office. Further, Bo Brummel would have to be assisted by both his parents and natural guardians when entering into the deed of sale and when signing the subsequent transfer documentation. [3]

---

<sup>24</sup> The first R600 000,00 is exempt from the payment of transfer duty.  
From R600 000,00 - R1m (R400 000,00) x 3% =R12 000,00  
From R1m - R1,5m (R500 000,00) x 5% =R25 000,00  
From R1,5m - R1,8m (R300 000,00) x 8% =R24 000,00  
**TOTAL =R61 000,00**

<sup>25</sup> As the value of the property is more than R100 000,00, the consent of the High Court and not of the Master, is required.

**Application under section 11(1)**  
of the Sectional Titles Act, 1986

I, the undersigned

Willem Hermanus Coetzer

in my capacity as director and duly authorised thereto by virtue of a  
resolution of the board of directors of  
Pineslopes Erf 6 Proprietary Limited  
Registration number 2000/000023/07

hereby apply to the Registrar of Deeds at **Johannesburg** for:

- 1 the opening of a sectional title register in terms of the provisions of Section 12(1)(b) of the Sectional Titles Act, 1986, and the registration of the attached sectional plan in terms of Section 12(1)(a) of the aforesaid Act, in respect of the scheme known as **Folkestone Down**  
S.G. No. **D1218/2007**  
and held under Deed of Transfer **T5/2005**;
- 2 the issue of certificates of registered sectional title in terms of the provisions of section 12(1)(d) of the aforesaid Act in respect of the sections shown on the said sectional plan;
- 3 the issue of a certificate of real right in terms of the provisions of section 12(1)(e) of the aforesaid Act in respect of any reservation in terms of section 25(1);
- 4 the issue of a certificate of real right in terms of the provisions of section 12(1)(f) of the aforesaid Act in respect of the right of exclusive use referred to in section 27(1).

SIGNED at Johannesburg on 11 September 2013.

\_\_\_\_\_  
On behalf of Pineslopes Erf 6 (Pty) Ltd [10]

<sup>26</sup> This question was also asked in May 2010 (Part 1), Question 6 for 50 marks.

6.2 **Schedule of Conditions under Section 11(3)(b)**  
of the Sectional Titles Act, no 95 of 1986

SECTIONAL PLAN : SG. No. D1218/2007

NAME OF SCHEME: Folkestone Down

NAME AND ADDRESS  
OF THE DEVELOPER Pineslopes Erf 6 Proprietary Limited  
Registration number 2000/000023/07  
of 57 Katjiefiering Avenue  
WONDERBOOM  
0182

NUMBER OF THE TITLE DEED OF THE  
LAND CONCERNED: T5/2005

NUMBER OF THE TITLE WHERE THE  
DIAGRAM IS FILED Diagram S.G. No 285/2001 is filed with  
T357/2001

I the undersigned

Erinda Frantzen

a conveyancer, practising as such in Pretoria, do hereby certify that the property  
known as -

Erf 1057 Paulshof Extension 68 Township  
Registration Division JR, Province of Gauteng  
Measuring 10 000 (ten thousand) square metres

Held by Deed of Transfer T5/2005

is subject or entitled to the following conditions:

A (1-5)

B (1-3)

C (1-4)

Subject further to all such conditions as are mentioned or referred to in the  
aforesaid deed<sup>27</sup>

---

<sup>27</sup> This general condition clause is inserted in all deeds registries, except Cape  
Town, Pietermaritzburg, Vryburg and Bloemfontein.

- D The developer has reserved itself and its successors in title the right to erect and complete from time to time within a period of 5 (five) years for its personal account a further building or buildings and/or a vertical extension and/or a horizontal extension of an existing building,<sup>28</sup> on the specified portion of the common property as contemplated in section 25(1) of the Sectional Titles Act.<sup>29</sup>
- E The developer has further imposed the following conditions in terms of section 11(2) of the Sectional Titles Act No. 95 of 1986, namely:-<sup>30</sup>
- 1 The owner of **section 1** shall be entitled to the exclusive use, occupation and enjoyment of the area marked **G1 (Garden)**, measuring 50 (fifty) square metres, indicated on page 3 of the sectional plan to the exclusion of the rights of all the other owners.
  - 2 The owner of **section 2** shall be entitled to the exclusive use, occupation and enjoyment of the area marked **G2 (Garden)**, measuring 50 (fifty) square metres, indicated on page 3 of the sectional plan to the exclusion of the rights of all the other owners.
  - 3 The owner of **section 3** shall be entitled to the exclusive use, occupation and enjoyment of the area marked **G3 (Garden)**, measuring 50 (fifty) square metres, indicated on page 3 of the sectional plan to the exclusion of the rights of all the other owners.

---

<sup>28</sup> Only one of these extensions or more than one should be inserted here, in accordance with what the developer is planning to do.

<sup>29</sup> The first part of the prescribed form for a real right of extension can be used for the wording of this reservation. The prescribed form can be found in Vorm Z, paragraph 3.

<sup>30</sup> Another way in which this paragraph could have been worded is:

The Developer has conferred, in terms of Section 11(2) of the Sectional Titles Act, 1986, read with Section 27 of the said act, the right to the exclusive use of the following parts of the common property, delineated for this purpose on the sectional plans, namely:-

No.	Exclusive Use Area	Exclusive Use No	Square metres
1	Garden	G1	50 (fifty)
2	Garden	G2	50 (fifty)
3	Garden	G3	50(fifty)
4	Garden	G4	50(fifty)

- 4 The owner of **section 4** shall be entitled to the exclusive use, occupation and enjoyment of the area marked **G4 (Garden)**, measuring 50 (fifty) square metres, indicated on page 3 of the sectional plan to the exclusion of the rights of all the other owners.

F No further conditions were imposed by the Developer.

SIGNED at Pretoria on 11 September 2013.

---

CONVEYANCER

[18]

- 6.3** 1 Two copies of the **sectional plan**, approved by the Surveyor-General;  
2 **Schedule of conditions** certified by a conveyancer in terms of section  
11(3)(b) of the Sectional Titles Act;  
3 Current **title deed**, Deed of Transfer T5/2005;  
4 Any current **mortgage bond** to which the property is subject to;  
5 **Consent by the mortgagee** to the opening of the sectional title  
register;  
6 **Certificate by a conveyancer** regarding the management and  
conduct rules prescribed in terms of section 35(2);  
7 **Certificate of real right of extension** of a scheme;  
8 **Certificate of real right of exclusive use areas**;  
9 **Certificates of registered sectional title** for each unit;  
10 **Plans** referred to in section 25(2)(a) & (b);  
11 **A schedule indicating the estimated participation quotas** of all the  
sections in the scheme after such section or sections have been  
added to the scheme;  
12 Particulars of any substantial **difference between the materials** to be  
used in the construction of the building(s) to be erected and those  
used in the construction of the existing building(s);

[12]

CONVEYANCER

Erinda Frantzen

## **Consent to opening of Sectional Title Register**

by virtue of the provisions of section 11(3)(d)  
of the Sectional Titles Act 95 of 1986

I, the undersigned

Dishonest Crook

in my capacity as signing official of Skelm Bank Limited, Registration  
number 1985/123456/06, duly authorised thereto by virtue of a  
resolution

the said bank being the legal holder of-

Mortgage Bond Nr B777/2005

passed by

Pineslopes Erf 6 Proprietary Limited  
Registration number 2000/000023/07

in favour of

Skelm Bank Limited  
Registration number 1985/123456/06

for the sum of

R10 000 000,00 (ten million rand) and an  
additional amount of R2 000 000,00 (two  
million rand);

DO HEREBY CONSENT TO:

- 1 The **opening of a sectional title register**.
- 2 The **registration of the sectional plan** in respect of the scheme known as Folkestone Down situate at -
  - Erf 1057 Paulshof Extension 68 Township
  - Registration division JR, Province of Gauteng
  - Measuring 10 0000 (ten thousand) square metres
  - Held under Deed of Transfer T5/2005



- 3 The **endorsement of the said mortgage bond** to the effect that it attaches to -
- i) the sections and common property shown on the sectional plan;
  - ii) the certificate of real right in respect of a right reserved by the developer in terms of section 25(1); and
  - iii) the certificate of real right in respect of rights of exclusive use as contemplated in section 27(1).

SIGNED at Pretoria on the 20 September 2013.

As Witnesses: 1 \_\_\_\_\_

2 \_\_\_\_\_

\_\_\_\_\_  
Dishonest Crook  
[10]

## Question 7 - Model answer

[20]

Prepared by me

CONVEYANCER

Erinda Frantzen

### Power of Attorney

I, the undersigned

Louis Lavender in my capacity as executor in the estate of the late  
Richard Scott  
Estate number 2356/2013  
duly authorised thereto by virtue of letters of executorship issued by the  
Master of the Kwazulu-Natal High Court, Pietermaritzburg on 15 March 2013<sup>31</sup>

do hereby nominate, constitute and appoint Erinda Frantzen and/or Gabriël  
Jacobus le Roux with power of substitution to be my true and lawful agent and to  
appear before the registrar of deeds at Pietermaritzburg and then and there as my  
act and deed to declare that -

I did on 16 May 2013, with the consent of the Master of the High Court, sell the  
undermentioned property for an amount of R1 900 000,00 (one million nine  
hundred thousand rand) to the undermentioned transferee, to pay for the debts of  
the joint estate of the late Richard Scott, estate number 2356/2013 and his  
surviving spouse Amy Adams, identity number 561206 0058 08 7, the transferee  
being -

- 1 Lira Maphanga  
Identity number 721201 0058 08 7  
married, which marriage is governed by the laws of Zimbabwe
  
- 2 Sipho Maphanga  
Identity number 700315 5369 08 2  
married, which marriage is governed by the laws of Zimbabwe

---

<sup>31</sup> Although the property is transferred from a joint deceased estate, only the  
executor passes transfer, as one of the exceptions in section 21 applies,  
namely the property has been sold to pay for the debts of the joint estate.

and the property being -

Erf 14 La Lucia

Registration Division ET, Province of KwaZulu Natal

Measuring 2 000 (two thousand) square metres

Held by Deed of Transfer T7531/2001

and further to cede and transfer the said property to the purchaser,

Lira Maphanga and Siphon Maphanga

To renounce all the right title and interest which the joint estate of the late Richard Scott, estate number 2356/2013 and his surviving spouse Amy Adams, identity number 561206 0058 08 7, widow, previously married in community of property with the deceased heretofore had in and to the said property, to free the said property from all encumbrances and hypothecations according to law

Signed at La Lucia on 11 September 2013

Witnesses:

1 \_\_\_\_\_

2 \_\_\_\_\_

\_\_\_\_\_  
Louis Lavender as executor

[10]

## 7.2 Calculation of transfer duty on R1 900 000,00

The first R600 000,00 is exempt	= R 0,00
From R600 000,00 to R1m (R400 000,00) X 3%	=R12 000,00
From R1m to R1,5m (R500 000,00) X 5%	=R25 000,00
From R1,5m to R1,9m (R400 000,00) X 8%	= <u>R32 000,00</u>
<b>TOTAL</b>	<b>=R69 000,00</b>

In other words, an amount of R69 000,00 in respect of transfer duty is payable.

[3]

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

- 1 **Draft deed of transfer**
- 2 **power of attorney** to pass transfer, together with the **section 42(2) endorsement by the Master** to indicate that there are no objections to the transfer
- 3 existing **title deed**
- 4 **transfer duty receipt**
- 5 **clearance certificate** from the local authority
- 6 a **certificate by the Master, executor or conveyancer** to certify that the land has been sold to pay the debts of the joint estate [7]

**TOTAL: [200]**

# Model Answers to the Conveyancing Examination

## September 2013

### Part 2

#### Self-Study Deeds Course

---

#### Question 1 - Model answer <sup>32</sup>

[4]

#### Exceptions where the title deed to a property need not be lodged: - <sup>33</sup>

- a) Where immovable property is to be transferred in execution of the judgement of a court and the sheriff certifies that he has been unable to obtain possession of such title deed - (regulation 51(2)).
- b) Where immovable property is transferred by an officer appointed by an act regarding insolvency - (regulation 51(2)).
- c) Where immovable property is transferred by an executor as contemplated in section 56(1)(b) of the Deeds Registries Act (in other words an executor administering an insolvent deceased estate) - (regulation 51(2)).
- d) Transfers of land due to expropriation (or where land has vested in the State, province or local authority by any law) do not necessitate production of the title deed, provided that the transferee (state, province or local authority) declare that it has been unable to obtain possession of such title deed - (section 31(2)(b) of the Deeds Registries Act).
- e) Where immovable property is to be transferred in terms of a court order in terms of section 33(1) of the Deeds Registries Act (registration of title by other than the ordinary procedure) and the transferee has declared that he has been unable to obtain possession of the title deed - (section 33(11)).

---

<sup>32</sup> This question has also been asked in September 2008 (Part 2), Question 1 for 4 marks.

<sup>33</sup> It is not necessary to quote the sections and regulations of the act in the exam. It is given here purely to help those of you who want to go through the provisions in the act itself.

## Question 2 - Model answer <sup>34</sup>

[4]

### Exceptions where the mortgage bond need not be lodged <sup>35</sup>

- a) Section 56 of the Deeds Registries Act stipulates that it is not necessary to lodge a mortgage bond for cancellation (release) in the following instances, namely:-
- 1 transfer by a sheriff in execution of a court order - (section 56 (1)(a));
  - 2 transfer from an insolvent estate - (section 56 (1)(b));
  - 3 transfer from insolvent deceased estate - (section 56(1)(b));
  - 4 transfer from a company or close corporation in liquidation - (section 56(1)(b));
  - 5 transfer by a trustee elected or appointed under the Agricultural Credit Act 28 of 1966 - (section 56(1)(b));
  - 6 transfer by court order (that is where the court has ordered that it is not necessary for the bond to be lodged) - (section 56(1)(c)).
- b) transfers of land due to expropriation (or where land has vested in the State, province or local authority by any law) do not necessitate production and disposal of any mortgage bond over such property - (section 31(1)).

## Question 3 - Model answer <sup>36</sup>

[6]

3.1 The remaining extent of Billabong Township situated on Portion 4 of the Farm Skin Deep 123  
Registration Division J.R., Province of Gauteng  
Measuring 3,9876 (three comma nine eights seven six) hectares  
Held by Certificate of Township Title T1234/2007

[3]

### 3.2 Documents to be lodged at the deeds office

- ▶ **Power of attorney** to pass transfer
- ▶ **Transfer duty** receipt (or exemption certificate)
- ▶ **Clearance certificate**
- ▶ **Certificate by the Surveyor-General** confirming the extent of the remainder of the township.

[3]

---

<sup>34</sup> Also see September 2008 (Part 2), Question 2 for 4 marks.

<sup>35</sup> See footnote 33 above.

<sup>36</sup> This question has also been asked in September 2008 (Part 2), Question 3 for 6 marks.

#### Question 4 - Model answer <sup>37</sup>

[6]

- A mortgage bond cannot be registered over a subdivided portion of land unless a certificate of registered title has been issued for such portion.
- The owner of a township in whose title deed the individual erven are not separately described, may not deal separately in any way with an individual erf in such township or any portion thereof or a share therein (except to transfer the whole erf), unless a certificate of registered title has been issued for such erf.
- The remainder of a property may not be transferred before any of the portions of the original property unless certificates of registered title have been issued for each portion thereof. The reason is that the remainder is only created and capable of being transferred once the certificates of registered title for the portions are registered.
- Joint owners of land holding their shares by one title deed as contemplated in section 34(1) of the Deeds Registries Act must obtain a certificate of registered title if one of them -
  - intends to transfer a fraction of his share
  - intends to mortgage the whole or a fraction of his share
  - intends to lease the whole or a fraction of this share.

#### Question 5 - Model answer <sup>38</sup>

[14]

- 5.1 I, the undersigned,  
Magda van Biljon in my capacity as trustee in the insolvent estate of  
Bennie Boekwurm  
Identity Number 750905 5612 08 8  
unmarried  
duly appointed by virtue of Letters of Authority issued by the Master of the  
Western Cape High Court, Cape Town on 1 September 2013 [2]

---

<sup>37</sup> This question was also asked in September 2008 (Part 2), Question 4 for 6 marks.

<sup>38</sup> Questions 5.1-5.5 have also been asked in September 2008 (Part 2), Question 5 for 14 marks.

5.2 We, the undersigned

- 1 Isabel le Roux in my capacity as executrix in the estate of the late Max Millian  
Estate number 1234/2013  
duly authorised thereto by virtue of Letters of Executorship issued by the Master of the North Gauteng High Court, Pretoria on 1 September 2013  
and
- 2 Mavis Millian  
Identity number 451212 0076 08 7  
unmarried<sup>39</sup>  
in my personal capacity as surviving spouse of the deceased to whom I was married in community of property [3]

5.3 I, the undersigned

Alexis Preller in my capacity as trustee and duly authorised thereto by virtue of a resolution by the trustees of the High Flyer Trust  
Registration number IT 123/2000  
the trustees being duly authorised thereto by virtue of Letters of Authority issued by the Master of the Kwazulu Natal High Court, Pietermaritzburg on 1 September 2013 [3]

5.4 I, the undersigned

Tim Timlin in my capacity as trustee and duly authorised thereto by virtue of a resolution by the trustees of the Affies Old Boys Rugby Club  
dated 11 September 2013 at Pretoria [3]

5.5 I, the undersigned

Irma Stern  
in my capacity as curator bonis of in the estate of the mental patient Looney Tune  
Identity Number 650808 0075 08 2  
unmarried  
duly authorised thereto by virtue of Letters of Authority issued by the Master of the Eastern Cape High Court, Port Elizabeth on 1 September 2013 [3]

---

<sup>39</sup> Or "widow".



5.6 We, the undersigned  
Adriaan Boshoff  
Identity number 801205 5248 08 8  
and  
Douw Greene  
Identity number 620505 5005 08 5  
partners in a civil partnership in community of property registered in terms of  
the Civil Union Act 17 of 2006

5.7 We, the undersigned

1 Alexis Preller  
Identity number 551212 5512 08 5  
a partner in a civil partnership out of community of property registered  
in terms of the Civil Union Act 17 of 2006

2 Walter Battis  
Identity number 520812 5369 08 7  
a partner in a civil partnership out of community of property registered  
in terms of the Civil Union Act 17 of 2006

## **Question 6 - Model answer** <sup>40</sup>

**[28]**

- 6.1 Transfer duty is payable in the amount of R32 000,00. The seller is not a registered VAT vendor for purposes of the transaction and even if she was, the sale of a property that was previously let out for residential purposes is VAT exempt which means that transfer duty is payable according to the gliding scale for all types of persons (natural/juristic/trust). <sup>41</sup> [4]
- 6.2 Transfer duty is payable in the amount of R77 000,00. The seller is A, who is not registered for VAT and thus transfer duty is payable. The fact that his wife is selling her business has nothing to do with the transfer of the property. Transfer duty is calculated according to the gliding scale for all types of persons (natural/juristic/trust). [4]

---

<sup>40</sup> This question was also asked in September 2008 (Part 2), Question 6 for 28 marks.

<sup>41</sup> The purchaser can however claim back the transfer duty that he has paid as a input tax deduction.

- 6.3 VAT will be payable at a rate of 14%. There are certain requirements for a transaction to be zero rated. Except for the fact that the seller and the purchaser must be registered VAT vendors for purposes of the transaction and that the property is to be sold as an income earning activity and a going concern, the parties must *agree in writing* that the property is sold as a going concern. [4]
- 6.4 VAT will be payable at the rate of 14%. The purchaser was not a registered VAT vendor at the time of the taxable supply being made, which is one of the requirements for a zero rated transaction. [4]
- 6.5 Yes. The SARS will allow the purchaser to register as a vendor and back date the registration certificate to the date that the supply took place. The supply will then qualify for the zero rate. [2]
- 6.6 Transfer duty in the amount of R0,00 is payable. When a person (natural or otherwise) acquires immovable property from a person who is not a registered VAT vendor for purposes of the transaction, transfer duty is payable at a certain gliding scale. At present the first R600 000,00 of the purchase price is exempt from the payment of transfer duty. [2]
- 6.7 Transfer duty in the amount of R77 000,00 is payable, according to the prescribed gliding scales applicable to persons (natural or otherwise). Any public benefit organization, institution, board or body is only exempted from the payment of transfer duty in terms of section 9 of the Transfer Duty Act, if it acquires a property used wholly or substantially for the purposes of one or more public benefit activity carried on by such organization. [2]
- 6.8 Transfer duty is payable in the amount of R0,00. Section 9 of the Transfer Duty Act provides for the exemption from the payment of transfer duty in this instance. [2]
- 6.9 Transfer duty is payable in the amount of R0,00. Henry Brown should pay transfer duty on the amount which equalizes the partition, i.e. on R40 000,00. The first R600 000,00 of the consideration is however exempt from the payment of transfer duty. [2]
- 6.10 The question whether transfer duty or VAT is payable is determined by the status of the seller and not the purchaser. The question does not mention whether the seller is a registered VAT vendor for purposes of the transaction. If he is, VAT will be payable on the transaction. If he is not, transfer duty shall be payable by the trust in the amount of R77 000,00. [2]

## Question 7 - Model answer <sup>42</sup>

[5]

A title deed may be permanently filed at the deeds registry in order to avoid waiting for delivery of such title after a registration has taken place. Normally this will be the case where a few properties are contained in a title deed which properties have to be transferred one by one from the said mother title deed. On lodgement of a transaction a reference must be made ( on the lodgement cover) to where the deed is filed.

A request for a deed to be filed is made by way of a request by the conveyancer on behalf of the owner to the Registrar and includes an indemnity in favour of the Registrar against damages the owner may suffer as a result of the loss and/or destruction of the deed. <sup>43</sup>

## Question 8 - Model answer <sup>44</sup>

[12]

8.1 The surviving wife will receive R125 000,00.<sup>45</sup> Each child will receive R70 000,00 <sup>46</sup>

[4]

---

<sup>42</sup> This question was also asked in September 2008 (Part 2), Question 7 for 5 marks.

<sup>43</sup> It is not only a deed of transfer (or certificate of registered title, certificate of consolidated title or certificate of township title) that can be centrally filed, but also a mortgage bond in terms whereof multiple properties are being mortgaged. Further, a title deed can be permanently filed, not only where even in a township are being transferred, but also where land has been subdivided into a number of portions and the title deed of such land is permanently filed.

<sup>44</sup> Also see Question 11 May 2007 (Part 2), Question 2 September 2001 (Part 1) and Question 2 May 1998 (Part 2) and Question 8 (Part 2) September 2008 for 12 marks.

<sup>45</sup> In this instance R125 000,00 is greater than a child's share of R83 750,00.

<sup>46</sup> The balance of R210 000,00, after the R125 000,00 of the mother has been subtracted is divided by the number of children.

8.2 A's father will receive 50% of his estate, i.e. R150 000,00 <sup>47</sup>  
A's two brothers will receive each R50 000,00  
The two children of A' sister will each receive R25 000,00 [4]

8.3 The surviving wife will get R160 000,00 <sup>48</sup>  
The child from the marriage with the deceased will receive R160 000,00  
The adopted child will receive R160 000,00  
The step-child is not entitled to anything. [4]

### **Question 9 - Model answer** <sup>49</sup> [2]

A rectification transfer from Jan van Zyl (the registered owner of Erf 124 Belville) to Chris le Roux must be done and another rectification transfer from Chris le Roux (the registered owner of Erf 123 Belville) to Jan van Zyl must be effected.

The causa in the power of attorney and deed of transfer must set out the full facts and circumstances under which the error occurred as well as how it should be rectified.

A rectification transfer is exempt from the payment of transfer duty, provided the transfer duty was fully paid on the transfer(s) in which the error in registration occurred - (section 9 of the Transfer Duty Act). A transfer duty exemption certificate however, still needs to be lodged.

### **Question 10 - Model answer** <sup>50</sup> [2]

Section 38 of the Deeds Registries Act provides for those rare cases where both-

- ▶ the client's copy of a title deed; and

---

<sup>47</sup> Section 1(1)(d)(ii) of the Intestate Succession Act 81 of 1987 provides that if a deceased person is not survived by a spouse or descendants but is survived by one of his parents, the surviving parent inherits half of the intestate estate and the descendants of the deceased parent the other half.

<sup>48</sup> A child's share is greater than R125 000,00 in this instance.

<sup>49</sup> This question was also asked in September 2008 (Part 2), Question 9 for 2 marks.

<sup>50</sup> This question was also asked in September 2008 (Part 2), Question 10 for 2 marks.

- ▶ the deeds office copy thereof, are lost or destroyed.

The owner may then apply for the issue of a certificate of registered title in respect of such land in accordance with the diagram of the land.

### Question 11 - Model answer <sup>51</sup>

[3]

- ▶ A servitude feature of uniform width or a servitude feature at a specified distance from and parallel to a surveyed line shown on a registered diagram, in either instance extending along the entire length of such surveyed line, may be registered by description without a supporting diagram.<sup>52</sup>
- ▶ Any other servitude may, at the discretion of the Surveyor-General, be registered if he is satisfied that such servitude can be plotted on the diagram of the land affected.<sup>53</sup>
- ▶ It is not necessary to annex a diagram to a deed in which a servitude is created, if such servitude is represented on a general plan.<sup>54</sup>
- ▶ When a servitude is described in general terms, for example when a servitude is registered over an area or along a route as the parties may agree to later on or from time to time.<sup>55</sup>
- ▶ Where a servitude, for example a *usufruct*, is registered over the whole property held under the deed of transfer.

(Any three of the above)

---

<sup>51</sup> This question was also asked in September 2008 (Part 2), Question 11 for 2 marks.

<sup>52</sup> Regulation 73(2) to the Deeds Registries Act.

<sup>53</sup> *Ibid.* A certificate by the Surveyor-General must be lodged confirming that the servitude can be plotted, together with the notarial deed of servitude.

<sup>54</sup> *Ibid.*

<sup>55</sup> *Ibid.*

## Question 12 - Model answer <sup>56</sup>

[3]

No, the Registrar will not accept certification by a conveyancer of a will. Regulation 50(1) to the Deeds Registries Act provides that where land is to be transferred in pursuance of the provisions of a will, codicil or other testamentary document, an accepted and certified a true copy by the Master of such document must be lodged.

If an accepted and certified copy of the will is already lodged in the deeds registry, it will not be necessary to lodge the will as a reference to the number and the date of the deed with which such copy is filed will be sufficient.

## Question 13 - Model answer <sup>57</sup>

[5]

13.1 No <sup>58</sup>

13.2 No

13.3 Yes <sup>59</sup>

13.4 No

13.5 No

**TOTAL: [100]**

---

<sup>56</sup> This question was also asked in September 2008 (Part 2), Question 12 for 4 marks.

<sup>57</sup> This question was also asked in September 2008 (part 2), Question 13 for 5 marks.

<sup>58</sup> Registrars' Conference Resolution 26/2005 provides that only one spouse, married in community of property, may apply. The Registrar of Deeds however has a discretion to insist on the consent for the non-applicant in light of the provision of regulation 68(2) of the Deeds Registries Act.

<sup>59</sup> Section 15(2)(g) of the Matrimonial Property Act.



Compiled by

**Erinda Frantzen**

BCom(Law)(UP) LLB (UNISA)

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

**Gawie le Roux**

BA(Law)(UP) LLB (UP) BA Honours (UNISA)

Attorney and Conveyancer of the High Court of South Africa

and published by

**Self-Study Deeds Course CC**

Registration number 1994/016876/23

PO Box 74047  
Lynnwood Ridge  
0040

Flinders Lane 451  
Lynnwood, Pretoria

**Tel: (012) 361-1715**

**Fax: (012) 361-1108**

**Web site: [www.aktepraktyk.co.za](http://www.aktepraktyk.co.za)**

**SOURCES**

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