

Model Answers to the Conveyancing Examination

May 2010

Part 1

Self-Study Deeds Course

Question 1 - Model answer

[25]

- 1.1** We, the undersigned
Steve Blog and Mary Blog in our capacity as parents and natural guardians
of Bennie Blog
Born on 3 March 2005 ¹
a minor [2]
- 1.2** I, the undersigned
Bennie Blog
Identity number 980202 5487 08 8
a minor
duly assisted by my parents and natural guardians Steve Blog and Mary Blog [2]
- 1.3** We, the undersigned,
1 Jo Malema
Identity number 591201 5478 08 7
married to Patricia Malema, which marriage is governed by the laws of
Kenya, duly assisted by my spouse

2 Patricia Malema
Identity number 620508 0048 08 7
married to Jo Malema, which marriage is governed by the laws of
Kenya, duly assisted by my spouse [4]
- 1.4** I, the undersigned,
Max du Preez
Identity number 750819 5798 08 7
married in community of property to Ethel Du Preez [2]

¹ "Or Identity number 050303 5789 08 7"

- 1.5** We, the undersigned
1 Mervin Naidoo
Identity number 551212 5731 08 2
married according to Muslim rites
- 2 Mavis Naidoo
Identity number 580509 0087 08 7
married according to Muslim rites [4]
- 1.6** We, the undersigned
Saul Peters, in my capacity as executor in the estate of the
late James Grant
estate number 1247/2010
duly authorised thereto by virtue of a letter of executorship issued by the
Master of the North Gauteng High Court, Pretoria on 15 March 2010
and
Merle Grant
Identity number 450514 0003 08 2
widow, in my personal capacity as surviving spouse of the deceased to
whom I was married in community of property [4]
- 1.7** I, the undersigned
Saul Peters, in my capacity as executor in the estate of the
late James Grant
estate number 1247/2010
duly authorised thereto by virtue of a letter of executorship issued by the
Master of the North Gauteng High Court, Pretoria on 15 March 2010 [2]
- 1.8** I, the undersigned
Avril Lavigny (formerly Bloch)
Identity number 691212 0754 08 2
unmarried [2]
- 1.9** I, the undersigned
Dudu Kheso
duly authorised thereto by virtue of a general power of attorney dated at
Pretoria on 20 November 2009 and registered under PA200/2009 at Pretoria,
granted to me by
Ben Bredenkamp
Identity number 561208 5555 08 7
married out of community of property [3]

Question 2 - Model answer

[15]

2.1 Portion 93 (a portion of portion 45) of the farm Bergbron 456
Registration Division J.R., Province of Gauteng
Measuring 320,1234 (three hundred and twenty comma one two three four)
hectares

As will appear from annexed diagram S.G. no 45/2008 and held by Deed of
Transfer T983/1985.² [7]

2.2 First transferred and still held by Deed of Transfer T777/2008 with diagram
S.G. no 45/2008 relating thereto.³ [4]

2.3.1 Application must be made by the registered owner for the issue of a
certificate of registered title for the portion of the property that was surveyed,
to which the sub-divisional diagram must be attached, as it is to remain
registered in the name of such owner. [2]

2.3.2 First transferred by Deed of Transfer T777/2008 with diagram S.G. no
45/2008 relating thereto⁴ and held by Deed of Transfer T444/2009.⁵ [2]

² Form TT issued under the Deeds Registries Act is used, if a property is
created as a entity on its own for the very first time.

³ Or annexed thereto. Form UU adapted is used for the second transfer
of the property.

⁴ Or annexed thereto.

⁵ Form UU is used, as a new property is not now being transferred, but
what is left over of an already existing property, and the title deed for
the remaining extent reflects the extending clause drafted according to
form UU adapted.

Question 3 - Model answer

[40]

3.1

Prepared by me

CONVEYANCER

Frantzen E

Application in terms of Section 17(4) of the Deeds Registries Act 47 of 1937

We, the undersigned

1 Greg Warner

Identity Number 630102 6262 08 2

a partner in a civil partnership out of community of property registered in terms of the Civil Union Act 17 of 2006

2 David Mtshali

Identity number 690519 5794 08 6

a partner in a civil partnership out of community of property registered in of terms of the Civil Union Act 17 of 2006

do hereby make oath and say that -

1 A civil partnership between us was solemnised on 3 July 2007.

2 Prior to the solemnisation and registration of such civil partnership, we entered into an antenuptial contract with the exclusion of the community of property and of profit and loss. Such antenuptial contract was duly registered in the deeds registry within the three month period from date of notarial execution thereof, in the deeds registry in Bloemfontein under H137/2007.

3 As proof of such civil partnership, we attach hereto a copy of the registration certificate issued by the Department of Home Affairs, reflecting the conclusion and registration of such partnership.

4 The said civil partnership between ourselves still subsists.

5 l) A unit consisting of -

a) **Section 132** as shown and more fully described on sectional plan **SS159/2002** in the scheme known as **Happy Days** in respect of the land and the building or buildings situate at **Bloemfontein**, Local

Authority: **Local Municipality of Mangaung**, of which section the floor area, according to the said sectional plan is **120 (one hundred and twenty)** square metres in extent; and

- b) an undivided share in the common property in the scheme apportioned to the said section in accordance with the participation quota as endorsed on the said sectional plan

Held by Deed of Transfer ST99/2003

II) A unit consisting of -

- a) **Section 133** as shown and more fully described on sectional plan **SS159/2002** in the scheme known as **Happy Days** in respect of the land and the building or buildings situate at **Bloemfontein**, Local Authority: **Local Municipality of Mangaung**, of which section the floor area, according to the said sectional plan is **120 (one hundred and twenty)** square metres in extent; and

- b) an undivided share in the common property in the scheme apportioned to the said section in accordance with the participation quota as endorsed on the said sectional plan

Held by Deed of Transfer ST99/2003

are registered in our names but our status are still reflected as “unmarried” therein.

- 6 The aforesaid properties are not mortgaged and there are no mutually dependant deeds requiring endorsement.

We hereby apply to the Registrar of Deeds at Bloemfontein for the endorsement of the aforesaid Deed of Transfer ST99/2003 to the effect **that our respective status are reflected as “partners in a civil partnership out of community of property registered in terms of the Civil Union Act 17 of 2006.**

G Warner

D Mtshali

I certify that the deponents have acknowledged that they know and understand the content of this affidavit, which was signed and sworn to before me at Bloemfontein on 5 May 2010 and that the provisions of the Regulations contained in Government Notice R1258 of 21st July 1972 (as amended) have been complied with.

Commissioner of Oaths [15]

Application under Section 15B(5) of the Sectional Titles Act 1986

I, the undersigned,

Greg Warner

Identity Number 630102 6262 08 2

a partner in a civil partnership out of community of property registered in terms of the Civil Union Act 17 of 2006

joint owner of:-

- 1) A unit consisting of -
 - a) **Section 132** as shown and more fully described on sectional plan **SS159/2002** in the scheme known as **Happy Days** in respect of the land and the building or buildings situate at **Bloemfontein**, Local Authority: **Local Municipality of Mangaung**, of which section the floor area, according to the said sectional plan is **120 (one hundred and twenty)** square metres in extent; and
 - b) an undivided share in the common property in the scheme apportioned to the said section in accordance with the participation quota as endorsed on the said sectional plan

Held by Deed of Transfer ST99/2003

- 2) A unit consisting of -
 - a) **Section 133** as shown and more fully described on sectional plan **SS159/2002** in the scheme known as **Happy Days** in respect of the land and the building or buildings situate at **Bloemfontein**, Local Authority: **Local Municipality of Mangaung**, of which section the floor area, according to the said sectional plan is 120 (one hundred and twenty) square metres in extent; and

⁶ **Form I** in the regulations to the **Sectional Titles Act** must be used.

- b) an undivided share in the common property in the scheme apportioned to the said section in accordance with the participation quota as endorsed on the said sectional plan

Held by Deed of Transfer ST99/2003

do hereby apply to the Registrar of Deeds at Bloemfontein for the issue to me of a Certificate of Registered Title in respect of an undivided $\frac{1}{2}$ (one half) share in the aforesaid units.

Signed at Bloemfontein on 5 May 2010

Greg Warner

Question 3.2 continues on the following page

Question 4.1 - Model answer

[7]

- 4.1** Once a land development applicant has taken steps to establish a land development area, no person may conclude a contract (not even a contract that is subject to a suspensive or other condition) -
- a) for the sale, exchange, alienation or disposal in any manner of an erf in that land development area;
 - b) for the erection of a dwelling on such erf;
 - c) for the granting of an option to purchase or sell such erf or granting a right of first refusal in respect of such erf;
 - d) to otherwise acquire such erf, unless-
 - i) the land development application has been approved; and
 - ii) the applicant has completed the steps for the land to become registrable or, to the extent that such steps have not been completed, the land development applicant has furnished the guarantees to the designated officer in respect of the completion of the steps required for the land to become registrable; or
 - iii) the tribunal has approved the commencement of a registration arrangement and the conditions imposed in respect of such approval have been complied with.⁷ Any contract entered into in contravention of the above shall be invalid.⁸

[7]

⁷ Section 36(1) of the Development Facilitation Act

⁸ Section 36(2) of the Development Facilitation Act.

**Certificate of Registered Sectional Title
issued under Section 15B(5)
of the Sectional Titles Act 1986**

I, the Registrar of Deeds at Bloemfontein, hereby certify that

Greg Warner

Identity Number 630102 6262 08 2

a partner in a civil partnership out of community of property registered in terms
of the Civil Union Act 17 of 2006

is the registered owner of -

- 1) an undivided one half ($\frac{1}{2}$) share in a unit consisting of -
 - a) **Section 132** as shown and more fully described on sectional plan **SS159/2002** in the scheme known as **Happy Days** in respect of the land and the building or buildings situate at **Bloemfontein**, Local Authority: **Local Municipality of Mangaung**, of which section the floor area, according to the said sectional plan is **120 (one hundred and twenty)** square metres in extent; and
 - b) an undivided share in the common property in the scheme apportioned to the said section in accordance with the participation quota as endorsed on the said sectional plan

Held by virtue of Deed of Transfer ST99/2003

The unit is subject to or shall benefit by -

- i) the servitudes, other real rights and conditions, if any, as contained in the schedule of conditions referred to in section 11(3)(b) and the servitudes referred to in section 28 of the Sectional Titles Act, 1986; and
- ii) any alteration to the building or buildings or to a section or to the common property shown on the said sectional plan.

- 2) an undivided one half ($\frac{1}{2}$) share in a unit consisting of -
 - a) **Section 133** as shown and more fully described on sectional plan **SS159/2002** in the scheme known as **Happy Days** in respect of the land and the building or buildings situate at **Bloemfontein**, Local Authority: **Local Municipality of Mangaung**, of which section the floor area, according to the said sectional plan is **120 (one hundred and twenty)** square metres in extent; and
 - b) an undivided share in the common property in the scheme apportioned to the said section in accordance with the participation quota as endorsed on the said sectional plan

Held by virtue of Deed of Transfer ST99/2003

The unit is subject to or shall benefit by -

- i) the servitudes, other real rights and conditions, if any, as contained in the schedule of conditions referred to in section 11(3)(b) and the servitudes referred to in section 28 of the Sectional Titles Act, 1986; and
- ii) any alteration to the building or buildings or to a section or to the common property shown on the said sectional plan.

Signed at Bloemfontein on _____ 2010

Registrar of Deeds [20]

3.3

- 1) an undivided one half ($\frac{1}{2}$) share in a unit consisting of -
 - a) **Section 132** as shown and more fully described on sectional plan **SS159/2002** in the scheme known as **Happy Days** in respect of the land and the building or buildings situate at **Bloemfontein**, Local Authority: **Local Municipality of Mangaung**, of which section the floor area, according to the said sectional plan is **120 (one hundred and twenty)** square metres in extent; and
 - b) an undivided share in the common property in the scheme apportioned to the said section in accordance with the participation quota as endorsed on the said sectional plan

Held under Certificate of Registered Sectional Title ST357/2010⁹ and subject to such conditions as set out in the aforesaid deed and **especially subject to a right of pre-emption registered in favour of Susan Warner, identity number 451212 0005 08 2, unmarried as will more fully appear from notarial deed SK324/2010-S.**

- 2) an undivided one half ($\frac{1}{2}$) share in a unit consisting of -
 - a) **Section 133** as shown and more fully described on sectional plan **SS159/2002** in the scheme known as **Happy Days** in respect of the land and the building or buildings situate at **Bloemfontein**, Local Authority: **Local Municipality of Mangaung**, of which section the floor area, according to the said sectional plan is **120 (one hundred and twenty)** square metres in extent; and
 - b) an undivided share in the common property in the scheme apportioned to the said section in accordance with the participation quota as endorsed on the said sectional plan

Held under Certificate of Registered Sectional Title ST357/2010 and subject to such conditions as set out in the aforesaid deed and **especially subject to a right of pre-emption registered in favour of Susan Warner, identity number 451212 0005 08 2, unmarried as will more fully appear from notarial deed SK324/2010-S.** [5]

⁹ The question begins by mentioning that the Certificate of Registered Sectional Title for the one half share of Greg Warner in the two units has been registered. Therefore the shares in the units are now held by this Certificate.

Question 4 - Model answer

[10]

4.1

The model answer for **question 4.1** can be found on page 7 above.

4.2 Section 36(3) provides that the provisions of this section shall not prohibit the entering into of-

- a) a contract for the acquisition in any manner by any person of-
 - i) land on which he or she wishes to establish a development area subject to the condition that one or more of the erven therein shall be transferred to the seller;
 - ii) land in respect of which a land development application has been made, and such person notifies the designated officer in writing of his or her acquisition of the land and that he or she wishes to continue with such application;
- b) a contract between a land development applicant and a building contractor for the erection of a building on an erf prior to the disposal of the erf by the land development applicant;
- c) any other contract prescribed

[3]

Question 5 - Model answer

[20]

5.1 Section 2 of the Recognition of Customary Marriages Act 120 of 1998 (herein after referred to as the Act) recognises the following marriages, namely -

- a) a marriage which is a valid marriage according to customary law and which exists at the commencement of the Act;
- b) a customary marriage entered into after the commencement of the Act and which complies with all the requirements of the Act;
- c) all valid customary marriages entered into before the commencement of the Act, if a person is a spouse in more than one customary marriage;
- d) all marriages entered into after the commencement of the Act, which comply with the provisions of the Act, if a person is a spouse in more than one customary marriage.

[4]

5.2 Customary law means the customs and usages traditionally observed among the indigenous African people of South Africa and which form part of the culture of those people.

[2]

- 5.3**
- a) The prospective spouses must both be above the age of 18 years;
 - b) The prospective spouses must both consent to be married to each other under customary law;
 - c) The marriage must be negotiated and entered into or celebrated in accordance with customary law;¹⁰ and
 - d) No spouse of a marriage entered into under the Marriage Act, 1961, during the subsistence of such marriage, is competent to enter into any other marriage (including a customary marriage).¹¹ [3]

5.4 John Mabinda must make an application to court to approve a written contract which will regulate the future matrimonial property system of his marriages. All parties with an interest must be cited as parties and be parties to the application. If it is granted, the registrar of the court must send copies of the court order and the contract to all the registrars of deeds in its jurisdiction area. The registrars of deeds must then record the court order and contract as an interdict against the parties' names. [3]

5.5 Siphiso Nxumalo
Identity number 800115 5578 08 2
and
Nonaindia Nxumalo
Identity number 811209 0457 08 7
married in community of property to each other [4]

5.6

- 1 Siphiso Nxumalo
Identity number 800115 5578 08 2
married out of community of property
- 2 Nonaindia Nxumalo
Identity number 811209 0457 08 7
married out of community of property [4]

¹⁰ Section 3(1) of the Recognition of Customary Marriages Act 120/1998.

¹¹ Section 10(4) of the Recognition of Customary Marriages Act. In other words the prospective spouses may not already be a party to a civil marriage.

Question 6 - Model answer

[30]

6.1

Prepared by me

CONVEYANCER

Le Roux G J

Power of Attorney and Agreement to Partition Land¹²

We, the undersigned,

- 1 Mary Lamb
Identity Number 510701 0017 08 8
unmarried

- 2 Delphinia Baxter
Identity Number 470107 0012 08 3
unmarried

being the joint owners of -

- 1) A unit consisting of -
 - a) **Section 132** as shown and more fully described on sectional plan **SS150/2000** in the scheme known as **Down Under** in respect of the land and the building or buildings situate at **Lynnwood Township**, Local Authority: **City of Tshwane Metropolitan Municipality**, of which section the floor area, according to the said sectional plan is **120 (one hundred and twenty)** square metres in extent; and
 - b) an undivided share in the common property in the scheme apportioned to the said section in accordance with the participation quota as endorsed on the said sectional plan

Held by Deed of Transfer ST 753/2000

- 2) A unit consisting of -
 - a) **Section 133** as shown and more fully described on sectional plan **SS150/2000** in the scheme known as **Down Under** in respect of the land and the building or buildings situate at **Lynnwood Township**, Local Authority: **City of Tshwane Metropolitan Municipality**, of which section the floor area, according to the said sectional plan is **120 (one hundred and twenty)** square metres in extent; and

¹² See **Examples 8 A & 8 E** in Part 4 of Self-Study Deeds Course for Attorneys.

- b) an undivided share in the common property in the scheme apportioned to the said section in accordance with the participation quota as endorsed on the said sectional plan

Held by Deed of Transfer T753/2000

Held by us as follows:-

Mary Lamb: ½ share in each unit by virtue of Deed of Transfer T753/2000

Delphinia Baxter: ½ share in each unit by virtue of Deed of Transfer T753/2000

do hereby declare that we have agreed to partition the said units by allocating a unit to each one of us as set out hereunder

AND we hereby nominate constitute and appoint
Gabriel Jacobus le Roux and/or Erinda Frantzen
with power of substitution to be our lawful attorney and agent and to transfer the
properties to ourselves respectively as agreed as follows, namely:-

- 1 Allocated to Mary Lamb
Identity Number 470107 0012 08 3
unmarried

the following property, namely -

A unit consisting of -

- a) **Section 132** as shown and more fully described on sectional plan **SS150/2000** in the scheme known as **Down Under** in respect of the land and the building or buildings situate at **Lynnwood Township**, Local Authority: **City of Tshwane Metropolitan Municipality**, of which section the floor area, according to the said sectional plan is **120 (one hundred and twenty)** square metres in extent; and
- b) an undivided share in the common property in the scheme apportioned to the said section in accordance with the participation quota as endorsed on the said sectional plan

Held by Deed of Transfer ST 753/2000

2 Allocated to Delphinia Baxter
Identity Number 510701 0017 08 8
Unmarried

the following property, namely -

A unit consisting of -

- a) **Section 133** as shown and more fully described on sectional plan **SS150/2000** in the scheme known as **Down Under** in respect of the land and the building or buildings situate at **Lynnwood Township**, Local Authority: **City of Tshwane Metropolitan Municipality**, of which section the floor area, according to the said sectional plan is **120 (one hundred and twenty)** square metres in extent; and
- b) an undivided share in the common property in the scheme apportioned to the said section in accordance with the participation quota as endorsed on the said sectional plan

Held by Deed of Transfer T753/2000

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

- i) The property may not be sold unless the registered owner has offered the property for sale to the said Mary Lamb and at a price which will be calculated as described in clause (ii) hereunder and the offer has been refused in writing.
- ii) The purchase price offered in terms of the contract of sale in paragraph (i) above, shall be determined by mutual agreement or failing such mutual agreement, by a sworn appraisal of the value of the property by a sworn appraiser nominated by the parties jointly for such purpose. In the event of the parties failing to agree upon a sworn appraiser, such sworn appraiser shall be nominated by a senior partner of Gawie le Roux Attorneys of 451 Flinders Lane, Lynnwood, or their successors.

And we do hereby declare that for the purpose of equalising the partition, Mary Lamb will pay to Delphinia Baxter R1 000 000,00 (one million rand) in consideration upon transfer of the above property into her name.

Signed at Pretoria on 5 May 2010

As witnesses: 1 _____

Mary Lamb

2 _____

Delphinia Baxter [20]

6.2 In terms of Section 9(1)(g) of the Transfer Duty Act, transfer duties shall not be payable on partition transfers, provided that if any consideration is paid by one of the parties to the partition to equalise the partition, transfer duty shall be payable on the amount of such consideration. The transfer duty is payable by the person who pays the consideration to equalise the partition. Mary Lamb is thus liable to pay transfer duty on the amount of R1 000 000,00.

Transfer duty is also payable on the acquisition of a limited real right in property. Thus Mary Lamb must also pay transfer duty on the value of the right of pre-emption that is registered simultaneously with the transfer. [5]

6.3 The right of pre-emption was created in the power of attorney and must from there be brought forward to the deed of partition transfer. Although the general rule requires personal servitudes to be created notarially, it was decided at a Registrar's Conference ¹³ that in the case as set out in the question, section 26(2)(d), read together with section 67 of the Deeds Registries Act, authorises the creation of conditions affecting any land or share therein awarded in terms of the partition agreement, in the power of attorney . To create the condition notarially would be more expensive. [5]

Question 7 - Model answer [60]

7.1

See the answer to **question 7.1** on the following page.

7.2.1 The same mortgage bond B4863/2006 for an amount of R1 220 000,00 is registered over all three component properties, namely Erf 4, 5 and 6 Best Buy Township, to be consolidated. This bond must be dealt with in accordance with section 40 of the Deeds Registries Act simultaneously with the consolidation. [2]

7.2.2 The mortgagee must consent to the consolidation of the component properties that are mortgaged, to the substitution of the consolidated property for the component properties that are currently mortgaged and to the issue of a certificate of consolidated title for the consolidated property, subject to the operation of the bond in terms of section 40(3) of the Deeds Registries Act. Prescribed form MM issued under the Deeds Registries Act is to be used for this consent. The bond will remain subject to all the conditions of title as set out in the certificate of consolidated title, and especially to the rights in favour of the Hubbly Bubbly Homeowners Association. [8]

¹³ Registrar's Conference Resolution 37/2005.

Application in terms of Section 40
of the Deeds Registries Act 47 of 1937 ¹⁴

I, the undersigned

Xander Yahoo Zoo, in my capacity as director and duly authorised thereto by virtue of a resolution of the board of directors of XYZ (Proprietary) Limited
Registration number 1999/000798/07

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

- 1 Erf 4 Best Buy Township
Registration Division I.Q., Province of Gauteng
measuring 599 (five nine nine) square metres

Held by Deed of Transfer T9090/2006
- 2 Erf 5 Best Buy Township
Registration Division I.Q., Province of Gauteng
measuring 1000 (one thousand) square metres

Held by Deed of Transfer T9090/2006
- 3 Erf 6 Best Buy Township
Registration Division I.Q., Province of Gauteng
measuring 1000 (one thousand) square metres

Held by Deed of Transfer T9090/2006

which properties on consolidation will be known as -

Erf 55 Best Buy Township
Registration Division I.Q., Province of Gauteng
measuring 2 599 (two five nine nine) square metres
as will appear from diagram S.G. No. 5/2008.

Signed at Johannesburg on this 5th day of May 2010.

On behalf of XYZ (Pty) Ltd

¹⁴ See **Example 9 B** in Part 4 of Self -Study Deeds Course for Attorneys.

Certificate of Consolidated Title ¹⁵

WHEREAS -

XYZ (Proprietary) Limited

Registration number 1999/000798/07

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

AND WHEREAS the said company is the registered owner of:

- 1 Erf 4 Best Buy Township
Registration Division I.Q., Province of Gauteng

Held by deed of Transfer T9090/2006

- 2 Erf 5 Best Buy Township
Registration Division I.Q., Province of Gauteng

Held by Deed of Transfer T9090/2006

- 3 Erf 6 Best Buy Township
Registration Division I.Q., Province of Gauteng

Held by Deed of Transfer T9090/2006

which have been consolidated into the land hereinafter described.

¹⁵ 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 Johannesburg, do hereby certify that the said

XYZ (Proprietary) Limited

Registration number 1999/000798/07

its successors in title or assigns, is the registered owner of

Erf 55 Best Buy Township

Registration Division I.Q., Province of Gauteng

measuring 2 599 (two five nine nine) square metres

as will appear from diagram S.G. No. 5/2008 annex hereto

Subject to the following conditions:

- 1 Subject to the following conditions imposed by and enforceable by the Local Authority:
 - a) The erf is subject to a servitude two metres wide in favour of the local authority, for sewerage and other municipal purposes, along one only of its boundaries other than a street boundary as determined by the local authority.
 - b) No building or other structure shall be erected within the aforesaid servitude area and no large-rooted trees shall be planted within the area of such servitude or within two metres thereof.¹⁶
- 2 The property may not be transferred to any person who has not bound himself/herself to become a member of the Hubby Bubbly Homeowners Association.
- 3 The former Erf 4 Best Buy Township, depicted by the figure ABCDA on annexed consolidation diagram S.G. no 5/2008, is subject to the following conditions:¹⁷
 - a) The property is subject to a right of way servitude, now indicated by the figure abcd on attached consolidation diagram S.G. no 5/2008 in favour of Erf 9 Best Buy Township as will more fully appear from Notarial Deed of Servitude K11/2002S with diagram S.G. no 1/2002 annexed thereto.

¹⁶ As all three component properties are subject to the first two conditions, the whole property is made subject thereto, without any qualification.

¹⁷ Only Erf 4 Best Buy is subject to these conditions and the conditions must therefore be qualified to indicate that they are only applicable to the former Erf 4 Best Buy Township. These conditions are indicated on the consolidation diagram and the lettering whereby the respective conditions are indicated must therefore also be added to the description of the conditions.

- b) The property is subject to a Pipeline Servitude, now indicated by the figure klmn on attached consolidation diagram S.G. no 5/2008 in favour of Erf 9 Best Buy Township as will more fully appear from Notarial Deed of Servitude K12/2001S with diagram S.G. no 2293/2001 relating thereto.
- 4 The former Erf 5 Best Buy Township, depicted by the figure EFGHE on annexed consolidation diagram S.G. no 5/2008, is subject to the following condition:¹⁸
The property is subject to a right of way servitude, now depicted by the figure rstu on attached consolidation diagram S.G. no 5/2008, for Municipal Purposes in favour of the Local Authority.
- 5 The former Erf 6 Best Buy Township, depicted by the figure JKLMJ on annexed consolidation diagram S.G. no 5/2008, is subject to the following condition:¹⁹
The property is subject to a garden servitude, now indicated by the figure vwxy on annexed consolidation diagram S.G. no 5/2008, in favour of Erf 12 Best Buy Township as will more fully appear from Notarial Deed of Servitude K13/ 2002S with diagram S.G. no 16/2002 annexed thereto.

And further subject to such conditions as are mentioned or referred to in the aforesaid deeds.²⁰

AND THAT by virtue of these presents, the said XYZ (Proprietary) Limited, its successors in title or assigns, now is and henceforth shall be entitled thereto conformably to local custom, the State, however, reserves its rights.

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

Thus done and executed at the office of the Registrar of Deeds at Johannesburg on this ____ day of _____ .

Registrar of Deeds
[50]

TOTAL: [200]

¹⁸ See the comment in the previous footnote. The principle applies *mutatis mutandis* to Erf 5 Best Buy Township.

¹⁹ See the comment in footnote 17. The principle applies *mutatis mutandis* to Erf 6 Best Buy Township.

²⁰ This general conditional clause is not applicable in the deeds registries for Cape Town, Pietermaritzburg and Bloemfontein.

Model Answers to the Conveyancing Examination

May 2010

Part 2

Self-Study Deeds Course

Question 1 - Model answer

[2]

The transfer of the property after publication in the Government Gazette of the notice of surrender of X's estate shall be unlawful, unless the person executing the writ could not have known about the notice.²¹

Question 2 - Model answer

[3]

According to Section 35 of the Insolvency Act the trustee of the insolvent estate may enforce or abandon the contract. The other party (in this case the purchaser) may call upon the trustee by notice in writing to elect whether he will enforce or abandon the contract and if the trustee has after the expiration of six weeks as from the receipt of the notice, failed to make his election and inform the other party thereof, the other party may apply to the court by motion for the cancellation of the contract and the court may make such order on the application as it thinks fit.

Section 35 shall not affect any right which the other party may have to establish against the insolvent estate, a non-preferent claim for compensation for any loss suffered by him as a result of the non-fulfilment of the contract.

Question 3 - Model answer

[2]

Any mortgage bond, except a "kustingsbrief," intended to secure a debt which has been incurred more than two months before lodgement of the bond at the deeds registry does not give the mortgagee a preferential claim if the estate of the mortgagor is sequestrated within six months after the date of lodgement: Provided that a bond is not deemed to have been lodged if it is withdrawn from registration.

²¹ Section 5(1) of the Insolvency Act 24 of 1936.

Question 4 - Model answer

[10]

- 4.1** Section 6(1)(a) of the Transfer Duty Act provides that commission paid or payable by the person who acquired the property, will be added to the amount on which transfer duty is payable. In the case where a property has been sold in execution, the amount to be added to the consideration shall be so much of any commission or fees paid or payable by the purchaser as exceeds 5% of the consideration payable in respect of the property. [2]
- 4.2** There shall for the purpose of the payment of transfer duty be added to the consideration payable in respect of the acquisition of any property - if property has been acquired by the exercise of an option to purchase or a right of pre-emption, any consideration paid or payable by the person who has acquired the property to any person in respect of the said option or right of pre-emption - (section 6(1)(b)). [1]
- 4.3** The total cost paid by the purchaser for the overseas trip of the seller's mother-in-law shall be added to the purchase price to determine on which amount of consideration duty is payable.²² [1]
- 4.4** The municipality is exempt from the payment of any transfer duties in terms of section 9 of the Transfer Duty Act.²³ [1]
- 4.5** The husband is exempt from the payment of transfer duty in this instance in terms of section 9 of the Transfer Duty Act.²⁴ [1]

²² There shall for the purpose of the payment of transfer duty be added to the consideration payable in respect of the acquisition of any property - any consideration which the person who has acquired property has paid or agreed to pay to any person whatsoever in respect of or in connection with the acquisition of the property, over and above the consideration payable to the person from whom the property was acquired - (section 6(1)(c)).

²³ Section 9(1)(b) of the Transfer Duty Act.

²⁴ Section 9(1)(i) of the Transfer Duty Act.

- 4.6** No duty shall be payable by such surety, provided -
- i) the duty as been paid in respect of the acquisition of the property under the transaction; and
 - ii) no further consideration is payable by the surety to either party to the transaction.²⁵ [2]

4.7 No transfer duty is payable, provided the duty payable in respect of the incorrect transfer has been duly paid.²⁶ [2]

Question 5 - Model answer [20]

Statement of Account - sale of sectional title unit

Seller: A

To	Purchase Price		1 750 000,00
By	Redemption of bond	0,00	
By	Estate Agent's Commission	122 500,00	
To	Occupational rental for August 2009		13 800,00
To	Occupational rental for September 2009		13 800,00
By	Bond cancellation costs	1 400,00	
By	Pro rata levies for August & September 2009	4 600,00	
Total		128 500,00	
	<i>balance owed to you</i>	<i>1 649 100,00</i>	
Balances		1 777 600,00	1 777 600,00

Balance owed to you 1 649 100,00

²⁵ Section 9(6)(a) of the Transfer Duty Act.

²⁶ Section 9(2)(i).

Statement of Account - sale of sectional title unit

Purchaser: B

By	Purchase Price	1 750 000,00	
To	Deposit on purchase price on 1/8/2009		590 000,00
By	Occupational rental for August 2009	13 800,00	
By	Occupational rental for September 2009	13 800,00	
To	Occupational rental for August		13 800,00
To	Occupational rental for September		13 800,00
By	Our fee for registration of transfer	14 035,09	
By	VAT on our fee	1 964,91	
By	Postage & Petties	394,74	
By	VAT on postage & petties	55,26	
By	Transfer Duty ²⁷	85 000,00	
By	Deeds Office Fee	1 200,00	
To	Payment of costs		16 450,00
To	Interest on investment		6 500,00
By	Admin fee: Levy clearance certificate	250,00	
To	Payment of guarantee		1 160 000,00
Total		1 880 500,00	
	<i>balance owed by you</i>		<i>79 950,00</i>
Balances		1 800 550,00	1 800 550,00

Balance owed by you

R79 950,00

Question 6 - Model answer

[4]

- a) The prospective spouses must both be above the age of 18 years;
- b) The prospective spouses must both consent to be married to each other under customary law;

²⁷ The transfer duty is calculated as follows -

0% on the first R500 000,00	R	0,00
5% on the second R500 000,00	R	25 000,00
8% on R750 000,00	R	60 000,00
TOTAL		R85 000,00

- c) The marriage must be negotiated and entered into or celebrated in accordance with customary law;²⁸ and
- d) No spouse of a marriage entered into under the Marriage Act, 1961, during the subsistence of such marriage, is competent to enter into any other marriage (including a customary marriage)²⁹ [3]

Question 7 - Model answer [10]

7.1 Yes, in terms of section 24*bis*(3),³⁰ section 57,³¹ section 45(2)(c),³² section 45*bis*(2)(a)³³ and section 45*bis*(2)(b)³⁴ of the Deeds Registries Act. [3]

7.2 The amount of a bond cannot be varied in terms of section 3(1)(s) of the Deeds Registries Act. Furthermore, the amount of a bond or the cover provided cannot be increased, but it can be reduced by the noting of a part payment (in the case of an ordinary bond) or a reduction in cover (in the case of a covering bond). [3]

²⁸ Section 3(1) of the Recognition of Customary Marriages Act 120/1998.

²⁹ Section 10(4) of the Recognition of Customary Marriages Act. In other words the prospective spouses may not already be a party to a civil marriage.

³⁰ If a partnership dissolves and the land registered in the name of the partnership is allocated to all the partners in their individual capacity, which land is encumbered by a mortgage bond, the partnership can be substituted with the partners in their individual capacity as the debtors under the bond.

³¹ If the owner of land which is mortgaged under a registered mortgage bond transfers the whole of the land mortgaged thereunder to another person and has not reserved any real right in such land, the registrar may register the transfer and substitute the transferee for the transferor as debtor in respect of the bond.

³² If the circumstances as set out in section 45(1) is present, and there is a bond registered over the property, the surviving spouse can be substituted as the only debtor under the bond.

³³ If the circumstances as set out in section 45*bis*(1)(a) or (b) is present and there is a bond registered over the property, the divorced spouse or the spouse who is entitled to the property in terms of a court order issued under section 20 or 21 of the Matrimonial Property Act or section 7(6) of the Recognition of Customary Marriages Act, can be substituted as the only debtor under the bond.

³⁴ If the circumstances as set out in section 45*bis*(1A) is present and there is a bond registered over the property, the former spouses can jointly and severally accept liability for the whole debt under the bond.

7.3 In terms of section 3(1)(s), the security under the bond may not be varied. The existing bond must be cancelled and a new bond registered over the new property. A property or a portion of a property may be released from the operation of a bond.³⁵ [2]

7.4 No direct provision for the substitution of one mortgagee with another mortgagee is made in the Deeds Registries Act. However, in effect this is what happens when the rights held by one mortgagee is ceded out and out to another mortgagee. [2]

Question 8 - Model answer [12]

8.1 According to a Registrar's Conference Resolution,³⁶ the provisions of section 38 of the Deeds Registries Act must be invoked. Section 38 makes provision for the procedure to be followed when the client's copy of a title deed as well as the copy of the deeds registry is lost or destroyed. [2]

8.2 In a Registrar's Conference Resolution³⁷ the following was decided:

- a) If the body corporate for the scheme has not yet come into existence, the developer may bring an application in terms of section 4(1)(b) of the Deeds Registries Act for the rectification of this error to insert a time period.
- b) If the body corporate is already in existence, a notarial variation agreement must be entered into by and between the developer on the one hand and the body corporate, with the written consent of all its members, on the other hand. The written consent of all bond holders of all the units in the scheme must also be obtained. If the agreement cannot be reached or the required written consent cannot be obtained, the court must be approached for an order. [6]

³⁵ In certain instances, when dealing with a bond(s) registered over property, the consequence will be that a property is substituted with another property, for example when component properties are consolidated and the mortgaged component is substituted with the consolidated property - (section 40(5)(a), Form WW), or in the case of a partition transfer where a share in the property which is mortgaged is substituted by 100% in a portion of the property. In this regard, see Self-Study Deeds Course for Attorneys, chapter 14, paragraph 5

³⁶ Registrar's Conference Resolution 40/2007.

³⁷ Registrar's Conference Resolution 43/2007.

8.3 Yes. At a Registrar's Conference ³⁸ it was decided that the developer may reserve a further or another right to extend the scheme, provided that he makes application in terms of section 68(1) of the Deeds Registries Act, for the noting of the lapsing of the real right that has lapsed. [4]

Question 9 - Model answer ³⁹ [2]

No. At a Registrar's Conference ⁴⁰ it was resolved that a clearance certificate is not a requirement in the case of expropriation and vesting transfers.

Question 10 - Model answer [6]

10.1 As will appear from general plan S.G. no 7404/2008 and held by Deed of Transfer T1234/1998. [3]

10.2 First transferred and still held by Deed of Transfer T6789/2009 with general plan S.G. no 7404/2008 relating thereto. [3]

10.3 First transferred and still held by Deed of Transfer T6789/2009 with general plan S.G. no 7404/2008 relating thereto in respect of one-half share, and held by Deed of Transfer T999/2010 in respect of another half share. [4]

Question 11 - Model answer [6]

11.1 The conveyancer has a choice. In other words one application may be lodged for the registration of the extension of the units setting out all the owners or different applications by the different owners of the units may be lodged in one cover. This was a decision at a Registrar's Conference.⁴¹ [4]

³⁸ Registrar's Conference Resolution 45/2007.

³⁹ This exact same question has been asked in May 2008 (Part 2), question 2.

⁴⁰ Registrar's Conference Resolution 5/2009.

⁴¹ Registrar's Conference Resolution 61(a)/2009.

11.2 Yes, all the extensions must be registered simultaneously.⁴² [2]

Question 12 - Model answer [2]

12.1 At a Registrar's Conference⁴³ it was resolved that the rules must be incorporated in the management rules. [2]

12.2 The management rules of a scheme may only be amended by a unanimous resolution of the body corporate for that specific scheme. As the section 27A rules form part of the management rules, it may also only be amended by a unanimous resolution. [4]

Question 13 - Model answer [13]

13.1 Yes, as long as a notarial tie agreement is registered simultaneously with the opening of the sectional title register.⁴⁴ [2]

13.2 No - Registrar's Conference Resolution 71/2009. [2]

13.3 Yes, a developer may, in terms of section 27(6) of the Sectional Titles Act grant a lease over an exclusive use area. [2]

13.4 The notarial deed of encroachment must be entered into by the developer (if the body corporate has not yet been established) or body corporate (if already established) on the one hand and the registered owner of the neighbouring property. The mortgagee of the bond that is registered over the neighbouring land must consent to the registration of the notarial deed.⁴⁵ [4]

⁴² Registrar's Conference Resolution 61(b)/2009.

⁴³ Registrar's Conference Resolution 69/2009.

⁴⁴ Registrar's Conference Resolution 70/2009.

⁴⁵ Section 75(3) of the Deeds Registries Act and Registrar's Conference Resolution 55/2006).

- 13.5 1 two copies of the approved **sectional plan of extension**
2 the **sectional title deed** of the section to be extended
3 the **sectional mortgage bond** registered over the section
4 the **consent by the mortgagee** to the registration of the plan of extension
5 a **certificate by a conveyancer** stating that - ⁴⁶
- ▶ there is not a deviation of more than 10% in the participation quota of any section as a result of the extension; or
 - ▶ if there is a deviation of more than 10%, that the mortgagees of each section in the scheme has consented to the registration of the sectional plan of extension
- 6 **transfer duty receipt** [3]

TOTAL: [100]

⁴⁶ Note that this number 5 has been amended by the Sectional Titles Amendment Act, 2010 which came into operation on 7 December 2010. This paragraph has been amended quite extensively. See Self-study Deeds Course for Attorneys, Part 2 for the new amendment.

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SOURCES

Self-study Deeds Course for Attorneys
Model Answers of LEAD

The Consolidated Practice Manuals of the Deeds Office of South Africa
Relevant acts, regulations and prescribed forms
Registrar's Conference Resolutions

