

# Model Answers to the Conveyancing Examination

## May 2011

### Part 1

#### Self-Study Deeds Course

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#### Question 1 - Model answer

[10]

1.1

Prepared by me

CONVEYANCER

Le Roux GJ

#### **Application and affidavit in terms of Regulation 68(1)**

of the Deeds Registries Act 47 of 1937

We, the undersigned

Black Beard

Identity number 550305 5012 08 9

and

July Beard

Identity number 601213 0059 08 8

married in community of property to each other

hereby declare under oath that:

- 1 We are the registered holders of B9715/2008  
passed by George Washington  
Identity number 670717 5003 085  
married to Jessie Washington, which marriage is  
governed by the laws of France, duly assisted by her  
in favour of Black Beard  
Identity number 550305 5012 08 9  
and  
July Beard  
Identity number 601213 0059 08 8  
married in community of property to each other

for the sum of R800 000,00 (eight hundred thousand rand)

And an additional  
sum of R160 000,00 (one hundred and sixty thousand rand)

- 2 The said bond has not been pledged and is not being detained by anyone as security for a debt or otherwise.
- 3 The said bond was actually lost or destroyed and cannot be found though diligent search has been made therefore.
- 4 We are not aware of the circumstances under which it was lost or destroyed.
- 5 We undertake to furnish the registrar with the original bond if it is found.

We hereby apply to the registrar of deeds at Pretoria for a certified copy of the said bond to be issued to us in respect of regulation 68(1) of the Deeds Registries Act 47 of 1937.

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Black Beard

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July Beard

I certify that the deponents have acknowledge that they know and understand the contents of this affidavit, that they have no objection to taking the oath and that they consider the oath to be binding on their conscience.

Signed and sworn before met at Pretoria on 11 May 2011

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Commissioner of Oaths  
Gabriël Jacobus le Roux, practising attorney  
451 Flinderslane, Lynnwood [7]

- 1.2 As nr 1 of the batch to be lodged in the deeds office, I will link the application and affidavit in terms of regulation 68(1), reflecting the correct identity number of Black Beard and in the second lodgement cover I would lodge an application and affidavit in terms of section 4(1)(b) of the Deeds Registries Act signed by Black Beard together with his wife July Beard to rectify the error iro his identity number. [3]

## Question 2 - Model answer <sup>1</sup>

[20]

2.1.1 And the appearer declared that -

Whereas in terms of the will dated 31 May 2005 and signed at Bergville, of the late Sarel Retief, who died on 15 March 2010, and who, at the time of his death, was married out of community of property to Susan Retief, the undermentioned property was bequeathed to his surviving spouse, Susan Retief, subject to a fideicommissum in favour of their son, Stefanus Retief, as more fully set out hereunder;<sup>2</sup>

Now therefore the said appearer did by these presents, cede and transfer to and in favour of -

Susan Retief

Identity number 501215 0082 0 8 8

unmarried

her heirs, executors, administrators or assigns

[7]

2.1.2 Whereas the transferor has waived all her right title and interest as fiduciary in respect of the undermentioned property in favour of the undermentioned fideicommissary;

And whereas the undermentioned transferee is, as fideicommissary heir is entitled to the undermentioned property, subject to the exclusion of the community of property as more fully set out hereunder;

Now therefore the appearer did by these presents, cede and transfer to and in favour of -

Sarel Retief

Identity number 751205 5487 08 2

married in community of property to Mary-Anne Retief, with the exclusion of the community of property in respect of the undermentioned property as a result of the stipulations contained in the will of the late Sarel Retief dated 31 May 2005

[4]

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

<sup>2</sup> No reference to the exclusion of the community of property must be made here, as the examiners want to test whether you are aware that the community of property is excluded by common law in respect of a fiduciary.

- 2.2.1 First transferred and still held by Deed of Transfer T1483/1985 with diagram S.G. Nr. A245/1974 annexed thereto. [2]
- 2.2.2 First transferred by Deed of Transfer T1483/1985 with diagram S.G. Nr. A245/1974 annexed thereto and held by Deed of Transfer T45678/2010.<sup>3</sup> [1]
- 2.3 No transfer duty is payable on either one of the transactions, as the acquisitions are exempt in terms of the Transfer Duty Act, on grounds of an inheritance. [1]
- 2.4 No. [1]
- 2.5 **Documents to be lodged in the deeds registry iro 2.1.1**<sup>4</sup>  
Existing **title deed**  
**power of attorney** to pass transfer  
**rates clearance certificate**  
copy of the **will**, certified by the master and endorsed as being accepted by the master  
**section 42(1)** of the Administration of Estates Act conveyancer certificate [3]

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<sup>3</sup> As the existing title deed whereby Susan holds the property has not been provided in the question, you had to make up a number.

<sup>4</sup> Note that you need not lodge a transfer duty exemption certificate. According to Chief Registrar's Circular 14 of 2000 you need not lodge a transfer duty exemption certificate in certain circumstances, for example if section 9(1)(e)(i) of the Transfer Duty Act is applicable (with a few exceptions).

### Question 3 - Model answer

[15]

Prepared by me

CONVEYANCER

Le Roux GJ

#### **Application in terms of section 40(1)(b)**

of the Administration of Estate Act 66 of 1965

I, the undersigned,

Peter Higgs in my capacity as executor in the estate of the late John Smith estate number 4567/2010, duly authorised thereto by virtue of a letter of executorship issued by the Master of the South Gauteng High Court, at Johannesburg on 15 November 2010

do hereby apply in terms of section 40(1)(b) of the Administration of Estates Act 66 of 1965 to the registrar of deeds at Johannesburg for the endorsement of Deed of Transfer ST3333/1981 whereby the following property is held, namely -

A unit consisting of-

- a) Section 3 as shown and more fully described on sectional plan SS193/1979 in the scheme known as Hellfire in respect of the land and building or buildings situate at Johannesburg, City of Johannesburg, of which section the floor area according to the sectional plan is 80 (eighty) 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 ST3333/1981

to the effect that the withinmentioned property is to be administered by the trustee of the John Smith Family Trust <sup>5</sup> in accordance with the provisions of the will of the late John Smith dated 10 August 2008, who died on 4 July 2010 on behalf of the beneficiaries appointed thereunder.

Signed at Johannesburg on 11 May 2011

\_\_\_\_\_  
Peter Higgs

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<sup>5</sup> If the will did not provide for a name of the mortis causa trust this part can read as follows, namely - "...shall be administered by the trustee appointed in terms of the provisions of the will of the late John Smith dated 10 August 2008 on behalf of the beneficiaries appointed thereunder..."

## Question 4 - Model answer <sup>6</sup>

[15]

4.1 Erf 444 Summerton Township  
Registration Division J.R. Province of Gauteng  
Measuring 496 (four nine six) square metres

Held by Deed of Transfer T7739/2003

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

K319/2004L, preference in respect of which has been waived as more fully set out hereunder [3]

### 4.2 **Waiver** <sup>7</sup>

- i Also appeared the said Erinda Frantzen duly authorised thereto by power of attorney, executed at Pretoria on 2 May 2011, and granted in his favour by John Hampshire  
Identity Number: 701212 5004 08 7 and  
Joan Hampshire  
Identity Number: 721201 0073 08 2  
Married in community of property to each other
  
- ii AND the appearer declared that the said *John Hampshire and Joan Hampshire*, declared to waive and postpone, as they hereby waive and postpone, in favour of this mortgage bond, the lease over the said property held by her principals by the notarial deed of lease no. K319/2000L to the intent that his/her said principals shall not at any time be in a position by virtue of such lease to compete with the said mortgagee, but in the event of the said property being sold in execution or insolvency, the mortgagee shall have the right to have the property transferred to the purchaser thereof free from such lease and to have the whole of the proceeds of such sale applied towards payment of such moneys as shall then be due and owing to the mortgagee under this bond, plus all costs and interests due.

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<sup>6</sup> The same question has been asked in May 1995 (Part 1), Question 4 for 13 marks.

<sup>7</sup> Note that the model answer provided by LEAD for this question is incorrect.

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

SECTIONAL PLAN :	SG. No. D19/2011
NAME OF SCHEME:	The Belvedere
NAME AND ADDRESS OF THE DEVELOPER	Quentin Investments CC Registration number 1980/852123/23 of 752 Sandile Mfusi street Morningside 1594
NUMBER OF THE TITLE DEED OF THE LAND CONCERNED:	T5531/1995
NUMBER OF THE TITLE WHERE THE DIAGRAM IS FILED	Diagram S.G. No 4487/1948 is filed with T789456/1948

I the undersigned

Erinda Frantzen

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

**Erf 543 Mountainside**

**Registration Division FU, Province KwaZulu Natal**

**measuring 3 000 (three thousand) square metres**

**Held by deed of transfer T5531/1995**

is subject or entitled to the following conditions:

- 1 The said Erf No 543 Mountainside is entitled to a servitude of right of way ten (10) metres wide over Erf no 542 Mountainside, measuring 1000 square metres, held by Deed of Transfer No T9876/1945<sup>8</sup> along and parallel to the entire length of the northern boundary of the said Erf No 542 Mountainside marked AB on the diagram No 2112/1948 thereof annexed to the said Deed of Transfer No T9876/1948.

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<sup>8</sup> This title deed number cannot be correct as it does not correspond with the title deed number further down in this condition. The title deed could not have been registered before the diagram has been approved, which approval only took place in 1948.

2     <sup>9</sup>

3     The developer has in terms of section 11(2) of the Sectional Titles Act, 1986, reserved itself and its successors in title the right to erect and complete from time to time within a period of 10 (ten) years for his personal account a further building or buildings and/or a vertical extension of an existing buildings or buildings and/or a horizontal extension of an existing building or buildings on the specified portion of the common property as indicated on the plan referred to in section 25(2)(a) of the Act, filed in the office of Pietermaritzburg, and to divide such building or buildings into a section or sections and common property and to confer the right to exclusive use over a portion of such common property upon the owner or owners of one or more units in the scheme.<sup>10</sup>

4     No further conditions were imposed by the Developer.

Signed at Pietermaritzburg on 11 May 2011.

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CONVEYANCER

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<sup>9</sup>     As there is no general conditional clause for deeds lodged in the Pietermaritzburg deeds office, the general conditional clause (And further subject to all such conditions as are mentioned or referred to in the abovementioned deeds”) has not been inserted here.

<sup>10</sup>    The wording of the real right as set out in Form F (certificate of real right of extension) can be followed here.



**Application and Affidavit in terms of  
Regulation 68(1) and 68(14) of the Deeds Registries Act <sup>11</sup>**

I the undersigned,

Hennie Niemann. in my capacity as the sheriff of the Magistrate's Court of Germiston duly authorised by virtue of a writ issued by the clerk of the court at Germiston on 16 February 2011

hereby make oath and say that:

- 1 Jan Snyman, identity number 501010 5001 08 2, unmarried, is the legal holder of mortgage bond B888/1995 passed in favour of Syringa Investments CC, Registration number 1990/005478/23 for the amount of R25 000,00 (twenty five thousand rand) and an additional sum of R5 000,00 (five thousand rand)
- 2 Pursuant to a warrant in execution, issued by the Magistrate's Court of Germiston in the matter between Secure Investments Proprietary Limited as the plaintiff and Jan Snyman as the defendant, I attached the mortgagee's rights in and to the said bond, and sold the said rights by public auction on 21 May 2011, to Secure Investments Proprietary Limited .
- 3 The mortgagee has since disappeared and I was unable to trace the said mortgagee or obtain possession of the aforementioned bond. The said mortgage bond was either lost or destroyed and cannot be found despite diligent efforts to do so on my part.
- 4 To the best of my knowledge the said bond has not been pledged and is not being detained by anyone as security for a debt or otherwise.
- 5 As I am required to cede Jan Snyman's right, title and interest in the said bond to Secure Investments Proprietary Limited, I hereby apply to the Registrar of Deeds at Johannesburg in terms of the provisions of Regulation 68(1) & (14) of the Deeds Registries Act, 47 of 1937, for the issue to me of a certified copy of the said mortgage bond B888/1995.

\_\_\_\_\_  
Hennie Niemann

Signed and sworn to before me at Germiston on 20 May 2011 by the Deponent, who acknowledges that he knows and understands the contents of this affidavit.

\_\_\_\_\_  
Commissioner of Oaths

Gabriël Jacobus Le Roux, Practising Attorney, 451 Flinderslane, Lynnwood

<sup>11</sup> See previous examination paper May 1997, Part 1 Question 4, and Sept 2007, Part 1, Question 5.

**Cession of a mortgage bond<sup>12</sup>**

I the undersigned,

Hennie Niemann. in my capacity as the sheriff of the Magistrate’s Court of Germiston duly authorised by virtue of a writ issued by the clerk of the court at Germiston on 16 February 2011

where Jan Snyman is the legal holder of the undermentioned bond, namely

number	B888/1995
passed by	Syringa Investments CC
	Registration number 1990/005478/23
in favour of	Jan Snyman
	Identity number 501010 5001 08 2
	Unmarried
for the sum of	R25 000,00 (twenty five thousand rand)
and the additional sum of	R5 000,00 (five thousand rand)

do hereby cede, assign and transfer all Jan Snyman’s right, title and interest in the above bond to and in favour of

Secure Investments Proprietary Limited  
Registration number: 1980/005789/07

which right, title and interest was sold by me by public auction on 21 May 2011 for an amount of R10 000,00 (ten thousand rand) in pursuance of a warrant of execution issued by the Magistrate’s Court at Germiston and following attachment, in the matter in which Secure Investments Proprietary Limited was the plaintiff and Jan Snyman was the defendant, re Germiston Magistrate’s Court case number 2234/2010, the abovementioned right title and interest in the bond registered in the name of the said Jan Snyman, for value received

I declare that the full amount is owed under the bond.

Signed at Germiston on 20 May 2011

As witnesses	1	_____
	2	_____

\_\_\_\_\_ H Niemann

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<sup>12</sup> The heading should refer to a “cession” and not “consent to cession.” As there is not a new mortgage bond that will be registered but the existing mortgage bond is ceded, the sheriff cannot merely certify that he has been unable to obtain possession of the bond ito reg. 51(2), an application in terms of regulation 68(1) & (14) has to be brought.

## Question 7 - Model answer

[10]

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Extract from the minutes of a general meeting of the shareholders <sup>13</sup> of Asmara Investments Proprietary Limited, Registration Number 1990/000332/07 (herein after referred to as “the company”) held at Pietermaritzburg on 15 April 2011

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All shareholders of the company being present, it was unanimously resolved that:-

1 The sale by the company to Linda Naidoo of

Lot 22 Winterskloof

situate in the Hilton Transitional Local Council Area, Administrative District of Natal, Province of Kwazulu-Natal

In extent: 3 000 (three thousand) square Metres

for the amount of R300 000,00 (three hundred thousand rand) is hereby ratified and confirmed. <sup>14</sup>

2 the directors of the company are hereby authorised to take all necessary steps as may be necessary to transfer the aforesaid property into the name of the purchaser.

Certified a true extract

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Chairman

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<sup>13</sup> Section 228 of the Companies Act requires a resolution by the shareholders of the company at a general meeting if all the assets or substantially all the assets of the company are being disposed of.

<sup>14</sup> As the company already sold the property, this act must be ratified.

All the directors being present, it was unanimously resolved that:

- 1 The company having sold to Linda Naidoo the company’s immovable property, namely  
Lot 22 Winterskloof  
situate in the Hilton Transitional Local Council Area, Administrative District of Natal, Province of Kwazulu-Natal  
In extent: 3 000 (three thousand) square metres  
for R300 000,00 , that transfer now be given to the purchaser
  
- 2 That Asma Asmara in his capacity as director of the company is hereby authorised to sign the power of attorney to pass transfer on behalf of the company as well as any other documents necessary to enable transfer of the said property to be passed to the purchaser.

Certified a true extract

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Chairman

## **Question 8 - Model answer**

**[8]**

- 8.1 And the appearer declared that -  
Whereas the said Sheriff of the High Court of South Africa (North Gauteng High Court, Pretoria) for the district of Wonderboom acting by virtue of a Warrant of execution, issued by the Registrar of the said High Court 10 March 2011 under case number 7531/2011, for the execution of a judgement, wherein Best Bank Limited, Registration number 1960/012348/06 was the Plaintiff and Jack Russell, identity number 721201 5789 08 7, unmarried was the defendant, caused to be attached and to be publicly sold on 2 May 2011, the hereinafter mentioned property to the hereinafter mentioned transferee. [6]
  
- 8.2 The sheriff must certify in writing that he has been unable to obtain possession of the title deed - (regulation 51(2)). [2]

## Question 9 - Model answer

[19]

9.1 Erf 100 Iringa  
District Bloemfontein, Province Free State  
measuring 900 (nine hundred) square metres

As will appear from general plan S.G. No. 5601/2001 and held by Certificate of Registered Title T8000/2001 [4]

9.2 First transferred and still held by Deed of Transfer T8269/2002 with general plan S.G. No. 5601/2001 relating thereto. [3]

9.3 First transferred by Deed of Transfer T8269/2002 with general plan S.G. No. 5601/2001 relating thereto and held by Deed of Transfer T<sup>15</sup> [4]

9.4 As will appear from annexed diagram S.G. No. 5000/2002 and held by Deed of Transfer T120500/2002. [4]

9.5 First transferred by Deed of Transfer T8269/2002 with diagram S.G. No. 4999/2002<sup>16</sup> relating thereto and held by Deed of Transfer T120500/2002. [4]

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<sup>15</sup> As the deeds office has not yet numbered the previous deed of transfer (due to the simultaneous registration of the two transactions) the number whereby the property is held is not yet known. This space must be left blank and the number of the previous title deed will be completed here by the deeds office upon the registration of the two transactions.

<sup>16</sup> The model answers provided by LEAD still refers to the general plan number here. This is incorrect. Whenever an erf is subdivided, a mother diagram of the original erf is prepared by the land surveyor so that the subdivided portion can be subtracted therefrom by the Surveyor-General. When the remainder of the erf is being transferred, reference must be made to the mother diagram and not longer to the general plan. Usually the number of the mother diagram will differ by one figure from the number of the subdivisional diagram for the portion, as both diagrams are simultaneously approved by the Surveyor-General.

## **Power of Attorney and Partition Agreement**

We, the undersigned

1 Albert Jones  
Identity number 510701 5017 08 8  
and  
Marina Jones  
Identity number 601230 0879 08 4  
married in community of property to each other

2 Brendan Jones  
Identity number 510701 5789 08 9  
married out of community of property

being the joint owners of -  
Erf 986 Durban  
Registration Division FU, Province of KwaZulu Natal  
measuring 2 500 (two thousand five hundred) square metres

Held by Deed of Transfer T3003/1982 by us in equal shares

do hereby declare that we have agreed to partition the said property by subdividing it and by allocating to each of us a defined portion thereof as set out hereunder, subject to or in favour of, as the case may be, of the new conditions set out below;

AND that we hereby nominate constitute and appoint Gabriël Jacobus le Roux with the power of substitution to be our true and lawful agent to transfer the sub-divided portions to us in severalty as follows -

1 Allocated to: Albert Jones  
Identity number 510701 5017 08 8  
and  
Marina Jones  
Identity number 601230 0879 08 4  
married in community of property to each other

the following property namely -

Portion 1 of Erf 986 Durban  
Registration Division FU, Province of KwaZulu Natal  
measuring 1 750 (one seven five nil) square metres

as shown on diagram SG no. 7273/2011

- 2 Allocated to: Brendan Jones  
Identity number 510701 5789 08 9  
married out of community of property

the following property namely:

Remaining Extent of Erf 986 Durban  
Registration Division FU, Province of KwaZulu Natal  
measuring 750 (seven five nil) square metres

Subject to the following condition in favour of Portion 1 of Erf 986 Durban:  
The owner of the Remaining Extent of Erf 986 Durban, measuring 750 (seven five nil) square metres or his successors in title shall not be entitled to erect any building or other structure of any kind extending higher than 8 (eight) metres above the level of the ground on which it stands, nor shall he allow any trees or other plants to grow on the said Remaining extent of Erf 986 Durban, exceeding a height of 8 (eight) metres above the level of the ground on which its stands without the written consent of the owner of Portion 1 of Erf 986 Durban first having been had an obtained.

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 for or in respect of the partition and simultaneous transfer of the property

Signed at Durban on 11 May 2011

As witnesses

1 \_\_\_\_\_

2 \_\_\_\_\_

\_\_\_\_\_  
Albert Jones

\_\_\_\_\_  
Marina Jones

\_\_\_\_\_  
Brendan Jones

## Question 11 - Model answer

11.1

[23]

Prepared by me

CONVEYANCER

Le Roux GJ

### Power of attorney to pass transfer

I, the undersigned

John Mokoena in my capacity as executor in the estate of the late David Mokoena, estate number 2456/2011 and duly authorised thereto by virtue of letter of executorship issued by the Master of the High Court, at Pretoria on 2 January 2011<sup>17</sup>

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

Whereas in terms of the joint will dated 20 October 2006 of the late David Mokoena, who died on 20 December 2010 and his surviving spouse, Salumina Mokoena to whom he was married in community of property, the testators have massed their joint estate and bequeathed their whole joint estate to their children in equal shares subject to a usufruct in favour of the surviving spouse as more fully set out hereunder;

And whereas the surviving spouse has adiated the terms of their joint will;

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

- 1 John Mokoena  
Identity number 700816 5478 08 2  
unmarried
- 2 Jolene Mokoena  
Identity number 741512 0078 08 7  
unmarried
- 3 Shantal Mokoena  
Identity number 780808 0878 08 1  
unmarried

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<sup>17</sup> As transfer is effected from a joint deceased estate and there was massing and adiation, one of the five exceptions in section 21 is applicable and therefore only the executor must pass transfer.



the following property namely -

Erf 52 Dawnville Township  
Registration Division J.R., Province of Gauteng  
measuring 980 (nine hundred and eighty) square metres

Held by Deed of Transfer T4567/2000

Subject to the following condition as contained in the joint will of the late David Mokoena and his surviving spouse Salumina Mokoena dated 20 October 2006, namely -

Subject to a life long usufruct in favour of -

Salumina Mokoena  
Identity number 580512 0087 08 8  
unmarried

Signed at Pretoria on 11 May 2011

As witnesses

1 \_\_\_\_\_

2 \_\_\_\_\_

\_\_\_\_\_  
John Mokoena [18]

11.2 The conveyancer must satisfy himself that -

- 1) the executor has been duly appointed;
- 2) the executor is acting within the scope of his powers which have been granted to him; and
- 3) the executor has provided the necessary security for the due administration of the estate, if any.

[3]

11.3 Yes. Only the property inherited from the deceased is exempt from the payment of transfer duty - (either ito s 9(1)(e)(i) or 9(15) of the Transfer Duty Act - the latter exemption is because VAT is payable). A transfer duty exemption certificate or a certificate prepared by the executor and approved by SARS to the effect that VAT is not payable should be lodged. In respect of the one half share in the bare *dominium* of the Dawnville erf which the children received from their mother, a transfer duty receipt must be lodged (if the value of the property exceeds R600 000,00) or a transfer duty exemption certificate (exempt due to the value of the property or due to the fact that VAT is payable). [2]

## Question 12 - Model answer

[8]

“Until such time as there has been full compliance with all suspensive conditions contained in this agreement, the Seller shall be entitled to continue marketing his/her property, subject thereto that should he/she receive another or more favourable offer which is not subject to a similar condition (selling of certain shares by 15 March 2009), a copy of the said offer shall be delivered to the purchaser, who shall be given the opportunity -

- i) to waive in writing all suspensive conditions contained herein in case of an equal offer; or
- ii) to make a similar or better offer to the seller within a period of 48 hours from receipt thereof. In such an event, the seller shall be obliged to accept such new offer from the purchaser. Should the purchaser, however, not make any such offer, the seller may accept the said further offer, whereupon the original offer to purchase will lapse and be of no further force or effect.”

## Question 13 - Model answer

[7]

Circumstances where the cooling-off period do not apply -

- 1 where the purchase price of the land, or the price offered for it, exceeds R500 000,00;
- 2 where a company, close corporation or trust is the purchaser;
- 3 where the purchaser has purchased land at a public auction;
- 4 where the purchaser and seller have previously entered into a deed of alienation in respect of the same land on essentially the same terms;
- 5 where the purchaser or prospective purpose has reserved the right to nominate or appoint another person to take over his/her rights and obligations under the contract;
- 6 where the purchaser is purchasing the land by the exercise of an option which was open for exercise for a period of at least five days;
- 7 where the land sold is agricultural land used mainly for commercial farming activities or intended mainly for such use or the land is not intended to be used mainly for residential purposes.

## Question 14 - Model answer

[14]

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

[2]

14.2 I, the undersigned  
Mary Brown (formerly Smith)  
Identity number 611001 0031 08 4

married in community of property to John Brown, with the exclusion of the community of property in respect of the hereinmentioned property as a result of the stipulations in the will of the late Jackson Smith dated 12 March 1980 [2]

14.3 I, the undersigned  
Mary Smith  
Identity number 611001 0031 08 4  
unmarried [2]

14.4 We, the undersigned  
Mary Brown  
Identity number 311003 0831 001 and  
John Brown  
Identity number 301212 5487 08 8  
married in community of property to each other <sup>18</sup> [2]

14.5 I, the undersigned  
John Brown in my capacity as member and duly authorised thereto by virtue of a resolution by  
Brown Investments CC  
Registration number 2005/013451/23 [2]

**Question 15 - Model answer [5]**

Vic Ellis  
Identity number 720812 5478 08 4  
married out of community of property  
and  
James Ellis  
Identity number 780513 5987 08 8  
unmarried  
and  
Ralph Ellis  
Identity number 740506 5321 08 7  
married in community of property to Susan Ellis  
together carrying on business in partnership as Ellis brothers  
their heirs, executors, administrators or assigns

**TOTAL [200]**

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<sup>18</sup> Although the community of property is excluded in respect of a fiduciary, the fact that the fideicommissary heir has died has the effect that Mary is the registered owner of the property which is no longer subject to the fideicommissum, which means that she is not a fiduciary anymore and the property therefore falls with the joint estate.

# Model Answers to the Conveyancing Examination

## May 2011

### Part 2

#### Self-Study Deeds Course

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#### Question 1 - Model answer <sup>19</sup>

[15]

- 1.1 **Documents to be lodged in the deeds registry -**
- 1 **Title deed(s)** for endorsement
  - 2 **CIPRO certificate** regarding conversion
  - 3 **conveyancer certificate** regarding verification of the CIPRO certificate [2]
- 1.2 Certified copy of the **certificate of incorporation**  
certified copy of the **memorandum and articles of association**  
**auditor's certificate**  
**resolution by the shareholders** of the company  
**resolution by the directors** of the company [4]
- 1.3 **unanimous resolution by the members** of the close corporation  
certified copy of the **founding statement** and amended founding statement of  
the CC (if applicable)  
usual **accounting officer's report** (including confirmation that there was no  
change in membership) [3]
- 1.4 Certified copy of the **constitution of the church**  
**resolution** that complies with the requirements as set out in the constitution [3]
- 1.5 Certified copy of the **will** and accepted by the master  
**letter of authority** issued by the Master of the High court  
**resolution** by the trustees of the trust authorising the transaction and appointing  
one of them to sign all the necessary documentation  
sworn valuation or other **proof regarding the value** of the property [3]

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<sup>19</sup> A similar question was asked in May 2009 (Part 2), Q 2, for 15 marks.

## Question 2 - Model answer

[10]

2.1 Yes.

- a) If spouses were married in community of property to each other and one of them dies or they get divorced and the surviving spouse or one of the spouses (whichever is applicable) is by law entitled to the ½ share of the deceased spouse or the divorced spouse, the spouse who is entitled to the ½ share may bring an application in terms of section 45(2)(c) of the Deeds Registries Act for the release of the deceased or divorced spouse from all liability under the said bond. Obviously the mortgagee must also consent to this - (Form T is used for this purpose).
- b) If a bond is passed by two or more mortgagor over their respective properties and all the property of one of the two mortgagors are released from the operation of the bond, such mortgagor and his property must be released from the operation of the bond. The co-mortgagor as well as the mortgagee must consent to the release - (section 55(1)). Form MM is used in this regard.
- c) If the whole of the land mortgaged under a mortgaged bond is transferred from one person to another person, and the transferor has not held a personal servitude out for himself, the purchaser may be substituted as the only debtor under the bond in terms of section 57 of the Deeds Registries Act. Form W - application by the new mortgagor and consent by the mortgagee - is used. [5]

2.2 No - (section 3(1)(s) of the Deeds Registries Act). [1]

2.3 Yes, a collateral bond may be registered by the same mortgagor as in the principal bond in favour of the same mortgagee as in the principal bond in respect of the same cause of debt (or part thereof). Prescribed Form KK issued under the Deeds Registries Act iro full title property and AJ issued under the Sectional Titles Act iro sectional title property are used.

A surety bond may also be registered by a third party for the indebtedness of the mortgagor (principal debtor) in favour of the creditor of the principal debtor. Form LL issued under the Deeds Registries Act (for full title property) and Form AK issued under the Sectional Titles Act (for sectional the property) are to be used. [2]

2.4 Yes, a substitutive bond may be registered by the same mortgagor in favour of the same mortgagee for the same cause of debt as in the bond that is simultaneously with the registration of the substitutive bond to be cancelled, which facts must be stated in the causa of the new bond. [2]

### Question 3 - Model answer

[3]

No. If a document is signed outside the Republic of South Africa for use inside the Republic of South Africa, the signature on such documents must be authenticated by the signature and seal of specified persons, depending on the circumstances, as set out in Rule 63 of the High Court Rules, for example if the document is signed in Lesotho, Botswana, Swaziland, Zimbabwe the signature may be authenticated by a notary. Another option is for the South African Embassy in that foreign country to authenticate the signature.

South Africa is a member of the Hague Convention. If the other country in which the document is signed is also a member of the convention, the rules of the said convention may be applied, requiring only an apostille to be attached or annexed as an "allonge" (annexure) to the relevant document.

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

[12]

- 4.1 Resolution by the close corporation ratifying the agreement and wherein one of the members is appointed to sign all the necessary transfer documentation Certified copy of the founding statement of the CC (wherein the certificate of incorporation is incorporated).
- 4.2.1 Adam Smith acting in his capacity as trustee of a close corporation still to be formed. [2]
- 4.2.2 "The representative (agent or trustee) hereby undertakes that he will as a matter of urgency make the necessary arrangements to register the purchasing close corporation, with one of its main objects the adoption and ratification of this agreement, with or without modification and that, in the event of -
- i) the close corporation not being registered within 21 days from the date of signature of this deed of sale, or within such further extended period as shall be mutually agreed upon in writing between the seller and the purchaser; or
  - ii) the close corporation having been registered, but failing to adopt and ratify this agreement within 7 days thereafter,
- then, and in such event, the trustee shall be regarded as personally bound and liable in terms of this agreement, in the same way as if his name and not the name of the close corporation had been given as the purchaser herein. Upon incorporation and ratification as aforesaid, the representative by his signature

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<sup>20</sup> A similar question has been asked in September 2010 (part 2), question 13 for 13 marks.

binds himself as surety and co-principal debtor in *solidum* with the close corporation, for the due and punctual performance by the close corporation of its obligations arising out of this agreement [6]"

### **Question 5 - Model answer [3]**

There is no difference in the amount of transfer duty payable in respect of a company or a trust as purchaser. This is the position since 1995. Before that time a trust has been rated at the same rate as for natural persons. Since 23 February 2011 there is no distinction between the rates for natural persons and juristic persons or trusts.

### **Question 6 - Model answer [4]**

It is permissible to include movable property which is not part of the deceased estate in order to equalise the distribution. No immovable assets may however be included from the outside of the estate to equalise the distribution. The share of the surviving spouse which such surviving spouse acquired because of his/her marriage in community of property to the deceased is also not an asset that may be included in the estate to equalise the distribution.

### **Question 7 - Model answer [6]**

- 7.1 A trust document is -
- i) a written agreement; or
  - ii) a testamentary writing (will); or
  - iii) a court order
- under which a trust was created.

A document which represents a reduction to writing of an oral agreement by which a trust is created/varied is deemed to be a trust instrument - (s 2) [3]

- 7.2 A trustee must lodge the trust instrument, in terms of which he was appointed as trustee, with the Master before he assumes control of the trust property. A person who has been nominated the trustee of a trust can only act in his capacity as trustee after he has received a letter of appointment from the Master. [2]

- 7.3 The trustee will first have to provide security for the due administration of the trust, unless he is exempt from the furnishing of security by an order of the

court, or the Master, or the trust instrument.

[1]

## Question 8 - Model answer <sup>21</sup>

[10]

- 1 Do a **company search** to ensure that the details of the company that you are going to use in your documentation are correct and make sure that the company is not de-registered, liquidated or placed under judicial management.
- 2 Do a **deeds search** to make sure that a liquidation interdict has not been noted against the company's name.
- 3 Obtain certified copies of the **certificate of incorporation** <sup>22</sup> and **certificate to commence business**.<sup>23</sup>
- 4 Peruse the **memorandum and articles of association** regarding the objects of the company and if there are any restrictions placed on the plenary powers (which include the borrowing powers) of the company. Also check the borrowing powers of the directors.
- 5 Obtain a **resolution** by the directors (or the shareholders, if applicable) of the company wherein the transaction is authorised and one of the directors is authorised to sign all the necessary documentation on behalf of the company.
- 6 Obtain a **company certificate**, signed by the duly authorised director wherein the following is confirmed -
  - a list of the current directors
  - that the company is not de-registered or liquidated and that no application for the liquidation of the company is pending
  - that there is not a contravention of any sections of the companies act or the memorandum and articles of association
- 7 Obtain an **auditors' certificate**, which also confirms the contents of the company certificate as set out in paragraph 6 above.

## Question 9 - Model answer

[4]

- 9.1 He first has to take out a Certificate of Registered Title for his share in the property in terms of section 34 of the Deeds Registries Act, as he is transferring a fraction of this share - (any joint owner holding a share in land under one title deed may not transfer a fraction of this share without first taking out a CRT for his whole share)

[2]

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<sup>21</sup> A similar question has been asked in September 2010 (Part 2), Question 19 for 10 marks and in May 2009 (Part 2), Question 6 for 10 marks.

<sup>22</sup> If the company was incorporated after 1 May 2011, this document will be called the registration certificate.

<sup>23</sup> A company that has been incorporated after 1 May 2011 is not issued with a certificate to commence business.



- 9.2 He first has to take out a Certificate of Registered title in terms of the provisions of section 34 of the Deeds Registries Act, before a bond can be registered over his undivided share - (joint owners holding a share in terms of one title deed may not mortgage his whole or a fraction of his share unless a CRT for his share has been issued. [2]

**Question 10 - Model answer [10]**

- 10.1.1 The whole or a part of the land in question has been expropriated. [1]
- 10.1.2 A certified copy in terms of regulation 68(1) of the Deeds Registries Act, to replace the one that has been lost or destroyed, has been issued in respect of title deed T489/1996. [1]
- 10.1.3 The property against which this caveat has been noted has been attached by the sheriff in pursuance of a warrant of execution issued by the court. [1]
- 10.1.4 A notarial deed of servitude has been registered over the property in question. [1]
- 10.1.5 A notarial bond has been passed by the mortgagor against whose name this endorsement appears. [1]
- 10.1.6 A contract in has been recorded against the relevant property in terms of section 20 of the Alienation of Land Act. [1]
- 10.2 The abbreviation stands for “with other property.” If this abbreviation appears above a bond endorsement on a title deed of a property, it indicates that including the property held by the relevant title deed, there are other properties, held by other title deeds that are also mortgaged by this mortgage bond. [2]

**Question 11 - Model answer <sup>24</sup> [10]**

- 1 ***Lodgement cover nr 1 - certificate of registered title***
- a) **application**, signed by the executor, for the issue of a certificate of registered title in respect of Portion 1 of Erf 15 Lesane and Portion 1 of Erf 16 Lesane; <sup>25</sup>

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<sup>24</sup> A similar question has been asked in May 2009 (Part 2), Question 11 for 10 marks.

<sup>25</sup> The certificate must be issued in the personal name of the deceased and not in his estate. The consent by the local authority confirming compliance with the conditions subject to which the subdivision has been approved will normally be endorsed at the back of this application

- b) **certificate of registered title** (wherein both Portion 1 of Erf 15 and Portion 1 of Erf 16 are listed);
- c) **subdivisional diagrams** for both portions;
- d) parent diagrams for both erven (if it has not already been filed at the deeds registry for the deduction of the portions);
- e) **consent to the subdivision** of the two erven by the relevant local authority;
- f) existing **title deeds** T2500/1993 and T4800/1994.

2 ***Lodgement cover nr 2 - consent by the mortgagee***

- a) **consent by the mortgagee** of B876/1995 to the cancellation of the bond;
- b) existing **mortgage bond** B876/1995.

3 ***Lodgement cover nr 3 - certificate of consolidated title***

- a) **application** made by the executor for the issue of a certificate of consolidated title in the personal name of the deceased (not his estate) in respect of the two properties, Portion 1 of Erf 15 Lesane and Portion 1 of Erf 16 Lesane;
- b) **certificate of consolidated title** drafted in accordance with prescribed form O;
- c) **consolidation diagram**.

*(The title deeds of the component properties can not be lodged here, as they will only be registered in number 1 of the batch).*

4 ***Lodgement cover nr 4 - K: Notarial deed of cession usufruct by executor in favour of Rose-Marie Smith***

- a) **notarial deed of cession** by the executor in favour of Rose-Marie Smith;
- b) **copy of the will, certified** as a true copy by the master and **endorsed as accepted** by him.
- c) **transfer duty exemption certificate**

5 ***Lodgement cover 5 - Transfer: from the executor to Elizabeth Smith***

- a) **Power of attorney**, to be signed by the executor, of Erf 100, in favour of Elizabeth Smith;
- b) **concept (draft) deed of transfer**;

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or a separate certificate may be issued, depending on the relevant former provinces.

- c) **transfer duty exemption certificate** or **certificate by the Receiver that the estate is not registered for VAT**;
- d) **clearance certificate** issued by the local authority;
- e) **Section 42(1)** of the Administration of Estates Act conveyancer certificate.

*(the current title deed is the certificate of consolidated title which is lodged with number 3 of the batch).*

## **Question 12 - Model answer**

**[1]**

The other spouse can obtain a court order, as the Matrimonial Property Act provides that the court may, on application by the other spouse, give him leave to enter into a transaction without the required consent, if the court is satisfied that the consent is unreasonably withheld, or in any other case that there is good reason to dispense with such consent.

## **Question 13 - Model answer**

**[2]**

Yes. The management rules may be amended by the body corporate by means of a unanimous resolution and the conduct rules may be amended by a special resolution by the body corporate.

## **Question 14 - Model answer**

**[1]**

Yes. Such judgement may be recovered from the members of the body corporate pro rata in proportion to their participation quotas - section 47 of the Sectional Titles Act).

## **Question 15 - Model answer** <sup>26</sup>

**[4]**

- 15.1 The seller has to apply for the recordal of the contract within 90 days from -
- the date of the conclusion of the contract; or

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<sup>26</sup> A similar question has been asked in May 2009 (Part 2), Question 8, for 4 marks.

- the date on which the property becomes registrable; or
- from when the property is registered in the name of the seller who was a purchaser in terms of a contract previously recorded or which should have been recorded. [1]

15.2 If the seller has not, within the 90 days referred to in paragraph 15.1 recorded the contract, the purchaser is entitled to, within 14 days after the lapse of the 90 day period, cancel the contract. If he chooses not to cancel, he may at any time after the expiration of the 90 days period, record the contract in the deeds office.

15.3 No person shall by virtue of a deed of alienation relating to an erf or a unit receive any consideration until -

- such erf or unit is registrable; and
- in the case the deed of alienation is a contract required to be recorded in terms of section 20, until such recording has been effected. [1]

15.4 Yes. However the mortgagee of such a mortgage bond is deemed to have consented irrevocably and unconditionally to the discharge of the mortgage bond or the release of the land from the bond, if the purchaser should demand transfer. The bond therefore does not afford much security. [1]

## **Question 16 - Model answer [2]**

In terms of section 6 of the Deeds Registries Act, the deed under which the land was held immediately prior to the registration of the deed which is cancelled by a court order, shall be revived to the extent of such cancellation and the registrar shall cancel the relevant endorsement therein evidencing registration of the cancelled deed.

**Documents to be lodged in the deeds registry -**

- 1 **Written application in terms of section 68(1)** of the Deeds Registries Act by the registered owner of the land over which the servitude is registered
- 2 **title deed of the land** over which the servitude is registered
- 3 **title deed of the servitude** (if any), if available. If not the registrar shall endorse the deed office copy as to the cancellation.
- 4 **proof of the lapse** of the servitude
- 5 **transfer duty receipt** or **transfer duty exemption certificate**, except if the servitude has served its time.

**TOTAL: [100]**

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<sup>27</sup> A similar question has been asked in May 2009 (Part 2), Question 7 for 5 marks.





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and published by

**Self-Study Deeds Course CC**

Registration number 1994/016876/23

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**SOURCES**

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The Consolidated Practice Manuals of the Deeds Office of South Africa  
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