

THE REPUBLIC OF SOUTH AFRICA

CONVEYANCING EXAMINATION

PART 2

11 SEPTEMBER 2019

4 Hours

12:00 - 16:15

Candidates are allowed 15 minutes to peruse the paper before starting to answer the questions. No candidate may start writing in the answerbook during this period. The examination of 4 hours then follows.

PLEASE NOTE:

1. Please write the number allocated to you on the cover of your answer book.
2. Candidates **must** write legibly and neatly. What may appear to a candidate (being accustomed to his own handwriting) to be legible, may **not** be legible to the examiners who cannot be expected to guess what has been written, nor would it be correct or fair (to other candidates) to expect the examiners to do so. If a candidate's handwriting is not **clearly** legible to the examiners, the candidate runs the risk of losing many marks. **ANSWERS MUST BE WRITTEN ONLY IN INK OR WITH A BALLPOINT PEN.**
3. Please use only **one** side of each page.
4. Details, especially the description of properties, may be changed to comply with the practice prevailing at your deeds office. However, if a question relates to farm property, the description may **NOT** be changed to that of an erf in a township.
5. Candidates must furnish such further details as may be necessary to draw properly the required deeds or documents, e.g. abbreviations (ID XXX), alphabetical symbols for names, and "etc."/"...." are unacceptable.
6. Deeds and documents to be drawn must comply fully with the requirements of the Deeds Registries Act and regulations, i.e. as if intended for lodgement in a deeds registry.
7. Candidates **MUST ANSWER ALL** questions.
8. Except if a special reason exists, a candidate will not be required to do an oral if 50% aggregate or more is attained. If a candidate achieves an aggregate of between 40% and 49% he/she will have failed the examination and will be required to do an oral in order to convince the examiners that he/she does have sufficient knowledge to pass the exam. Candidates who attain less than 40% will not qualify for an oral and will have failed this examination.

TOTAL MARKS: [200]

QUESTION 1**[10]**

Inventing your own additional facts where necessary, draft a clause for insertion in an agreement of purchase in which the purchaser purchases a particular immovable residential property provided he is able, within a particular time limit, to sell his existing residence, a unit owned under the Sectional Titles Act, and provided further that he is able to raise a loan from a financial institution for the shortfall in the purchase price.

QUESTION 2**[10]**

In terms of his Will, Alan Wood, who was married in community of property to Elizabeth Wood, bequeathed the property describe as Erf 1022 Tongaat Township to his two minor children, namely Thomas and Arthur Wood, with a provision that the property is to be held in trust until the younger child turns twenty-one. Invent your own further particulars, if necessary and draw the document to enable effect to be given to the terms of the Will.

QUESTION 3**[10]**

(Note: The Candidates are supplied with the Acts and Regulations and no marks will thus be allocated without a motivation in this question)

Discuss briefly whether it is necessary to lodge the Deed of Transfer and/or the mortgage bond registered over the property in the following instances:

- 3.1 Transfer of a property sold in execution by the Sheriff. (2)
- 3.2 Transfer of a property sold by the trustee of an insolvent estate. (2)
- 3.3 Transfer of a property sold by the liquidator of a company that cannot pay its debts. (2)
- 3.4 Transfer of a property expropriated by the local municipality. (2)
- 3.5 Transfer of a property by the executor in a deceased estate where the mortgage bond has been lost. (2)

QUESTION 4**[30]**

Mary Lamb and Delphinia Baxter are both unmarried. They are the joint registered owners of Sections 132 and 133 in the sectional title scheme known as "Down Under". They have decided to no longer be joint owners and that Mary will take transfer of Section 132 and Delphinia will take transfer of Section 133. Section 132 has a higher value and Mary will pay Delphinia R1 000 000.00 upon transfer of the section to her.

They have further agreed that the transfer of Section 133 to Delphinia will be made subject to a right of pre-emption in favour of Mary.

The intended transfers and creation of the right of pre-emption must be done in the most cost effective manner.

- 4.1 Draw the Power of Attorney to pass transfer of the sections to Mary Lamb and Delphinia Baxter, supplying such further details as may be necessary. (20)
- 4.2 Discuss the transfer duty implications, if any, of the transaction. (5)
- 4.3 Explain how you dealt with the right of pre-emption in the manner you did and why you dealt with it in such a manner. (5)

QUESTION 5

[25]

The Trustees of the Hope Trust No. IT 8183/2001 are the registered owners of the following properties:

1. PORTION 3 OF ERF 699 IN THE TOWNSHIP KUBE
MEASURING 3 678 SQUARE METRES
HELD BY DEED OF TRANSFER T10/2002
and
2. ERF 747 IN THE TOWNSHIP KUBE
MEASURING 2 038 SQUARE METRES
HELD BY DEED OF TRANSFER T11/2002

The two properties are adjacent and the trustees have decided to consolidate them.

The Deed of Transfer of Portion 3 of Erf 699 Kube contains the following conditions:

- A. No trade or business in wine, spirits or beer shall be carried on the said property.
- B. The property is subject to a 2 metres wide servitude for municipal purposes in favour of the Bela Local Municipality together with ancillary rights as will more fully appear from Notarial Deed No. K7008/2017 with diagram annexed thereto.

The Deed of Transfer of Erf 747 Kube contains the following conditions:

- A. No trade or business in wine, spirits, beer or other spirituous liquors, shall be carried on the said property.
- B. The property is subject to a 5 metres wide right of way servitude in favour of Highbrow Holdings Proprietary Limited as will more fully appear from Notarial Deed No. K1000/2017S with diagram annexed thereto.

The consolidation diagram S.G. No. 25/2018 contains inter alia the following data:

Components:

1. The figure AabD represents Portion 3 of Erf 699 Kube
2. The figure aBCb represents Erf 747 Kube and

Servitude notes:

1. The line vx represents the centre line of a servitude 2 metres wide K7008/2017S.
2. The line BC represents the eastern boundary of a servitude 5 metres wide K1000/2017S.

Draft **only** that part of the certificate of consolidated title from and including the property description up to and including the conditions. Provide your own details where required.

QUESTION 6

[15]

The owner of Erf 119 Farrar Park Township has obtained the required consent to subdivide the Erf into two portions. A sub-divisional diagram has been approved in respect of the surveyed portion.

The owner has now sold the Remaining Extent of Erf 119 which property will be entitled to a servitude of right of way over the surveyed portion.

- 6.1 An act of registration must take place before the remainder of Erf 119 can be transferred. Draw the application required for that act of registration. Provide your own particulars to complete your answer properly. (7)
- 6.2 How will you create this servitude other than by a notarial deed? (2)
- 6.3 Draft the servitude as it will appear in the Deed of Transfer of the remainder of Erf 119. Provide your own particulars. (6)

QUESTION 7

[10]

- 7.1 Transfer of a unit in a sectional title scheme from the developer to A is registered in 2007. Simultaneously with said transfer an exclusive use area is ceded from the developer to A – forming part of the transaction.

In 2011 transfer of the same unit from A to B is registered. No cession of the exclusive use area is registered, although it formed part of the transaction between A and B. Subsequently various transfers of the unit are registered (i.e. from B to C, from C to D, from D to E, etc.), emanating from the sale of the unit and the exclusive use area.

Presently, yet another transfer of the unit is to be registered. Only now the omission to cede the exclusive use area with each of the previous transfers is discovered. From the Deeds Office records it appears that A is still the registered holder of the exclusive use area. A is no longer the registered owner of any units in the scheme.

How must the said omission be dealt with? Who must now cede the exclusive use area? Motivate your answer. (6)

- 7.2 Will it make any difference to your answer if A is still the registered owner of another unit in the sectional title scheme? Motivate your answer. (4)

QUESTION 8**[20]**

John and Mary Smith, married in community of property to each other, are the registered owners of Erf 88 in the Township Choma. In their joint will, they bequeathed the property to the survivor of them.

Mary died on 15 November 2017 and Best Bank Ltd was appointed as executor.

John died on 15 March 2018 before Mary's estate was wound up and the property registered in John's name.

Peter Smith, the son of John and Mary was appointed executor in John's estate.

The children of John and Mary, who are all over the age of 21, decided that the property must be sold by the executor in Mary's estate.

- 8.1 Draft the Power of Attorney to pass transfer of the property to the purchaser thereof. Provide your own details to complete your answer fully. You need not provide your Power of Attorney with the usual "general clause" at the end thereof. (14)
- 8.2 List the documents and consents to be lodged with the transfer. (6)

QUESTION 9**[11]**

Erf 400 in the Township Kasama, has been bequeathed by Hendrik de Vries to the children born or to be born to his daughter Susan de Wet. At the time of Hendrik's death, Susan has no children, and the property has been transferred to:

SUSAN DE WET

Identity No. 500303 0567 08 0

married out of community of property

IN TRUST FOR HER CHILDREN BORN OR STILL TO BE BORN

Susan died on 14 January 2019, leaving two children, Albert de Wet (born 15 December 2010) and Hendrina de Wet (born 21 March 2012).

- 9.1 Draft the document which must be submitted to the Registrar of Deeds in order to have the property registered in the name of the children. Provide your own details. (8)
- 9.2 List the documents to be lodged – penalised for wrong documents listed. (3)

QUESTION 10**[16]**

Jan Visagie has sold Portion 1 of his farm and in the Deed of Sale has reserved to himself, as owner of the remainder, the right to erect a pump-house adjacent to a dam on the portion sold, together with the right to draw water from the dam and to

lead such water by means of a pipeline to his property together with the right of access for maintenance purposes.

The following servitude notes appear on the sub-divisional diagram of Portion 1, diagram S.G. No. 800/2017, namely;

1. The figure abcd represents a servitude area 25 square metres in extent.
2. The line efghj represents the centre line of a servitude 2 metres wide.

Draw the servitudes as they will appear in the Deed of Transfer of Portion 1 sold.

QUESTION 11 **[10]**

Rush Badja and San Badja, married in community of property, are the registered owners of

Erf 352 Monga Township
In extent 4560 square metres
under Deed of Transfer T872/1979

The owners have built six units on the property and propose to cause a sectional title register to be opened in respect of the property. They wish to reserve to themselves the right to erect a further ten units at a later stage.

The property is subject to conditions numbered 1(a) to (c), 2(a) to (e) and 3(a) and (b) in the Title Deed.

Draw the schedule required in terms of Section 11(3)(b) of Act 95 of 1986. In your answer, you may refer to the conditions of title as set out above. Provide your own further details.

QUESTION 12 **[12]**

Mr Jurie Botes had bequeathed the property to an *inter vivos* trust and the property was duly registered. After the registration the office of the Master of the High Court realised that the trust's registration/reference number was duplicated on the Letters of Authority and issued a new number. Draft the necessary application to ensure that the Title Deed reflects the correct registration/reference number.

QUESTION 13 **[12]**

Mr Jurie Botes (now deceased) during his lifetime had entered into a registered long lease with TCM Proprietary Limited Registration Number 1999/5423123/07, which has now lapsed due to default on the part of the lessee to make regular monthly payments. The Executor, as a result thereof, effected the necessary cancellation by notice as prescribed in the lease of land which provides for the necessary lapsing/cancellation. Draft the necessary application (incorporating the affidavit, if required) to effect the lapsing/cancellation against the relevant Title Deed.

Your client is developing a scheme in terms of the Sectional Titles Act. Your client wants to grant the right of exclusive use of parts of the common property to individual buyers, and has asked for advice as to how this can be achieved. How will you advise your client as to the two different ways in which the right of exclusive use can be created by the developer and briefly discuss the merits of each procedure.

THE END



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OF SOUTH AFRICA