

THE REPUBLIC OF SOUTH AFRICA

CONVEYANCING EXAMINATION

PART 2

4 MARCH 2020

4 Hours

09:00 - 13:15

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**[15]**

Zodwa Mokomo is the registered owner of the Farm Saltpan and Kenneth Twala is the registered owner of the Farm Mountain View. They agreed to pass a mortgage bond over the aforesaid farms in favour of Norma Dendile, who is married in community of property to Jason Dendile, as security for the sum of R500 000,00 (provisions of National Credit Act not applicable) made up as follows:

R100 000,00 in respect of money lent and advanced to them;

R400 000,00 in respect of the balance of the purchase price of goods sold and delivered to them.

The bond is to rank as a first mortgage over the farm Saltpan and as a third mortgage over the farm Mountain View. The debtors are jointly and severally liable. There is an existing bond over the farm Saltpan in respect of which preference will have to be waived in favour of the bond about to be registered.

- 1.1 Using your own further particulars, as may be required, draw the operative clause only of the waiver of preference in respect of the existing mortgage bond over the Farm Saltpan. (6)
- 1.2 Using your own further particulars, as may be required, draw the following parts of the bond about to be registered:
 - (i) The acknowledgement clause and cause of debt; (3)
 - (ii) The renunciation of legal exceptions clause; (3)
 - (iii) The ranking and property/security clause. (3)

QUESTION 2**[10]**

Magnum Molepo, married out of community of property, is the registered owner of Portion 4 of the Farm Mopani No. 64, Registration Division, LS Limpopo Province, in extent 800 hectares, held by him by Deed of Transfer No T86321/2015. Sub-divisional diagram SG No. 384/2016 was approved in respect of Portion 1 (a portion of Portion 4) of the Farm Mopani No. 64, in extent 400 hectares. The Land Surveyor discovered that the original diagram of Portion 4 above is defective and he framed a substituted diagram No. 487/2017 showing the extent of Portion 4 above to be 830 hectares.

- 2.1 Prepare the application to be lodged by Magnum Molepo to correct the error in the extent of the land. (7)
- 2.2 Which documents must be lodged in support of the application. The property is not bonded. (3)

QUESTION 3**[7]**

Mr Jurie Botes dies owning a property described as Erf 123 Patryspark Township. In his Will he directed that a *usufruct* in the property be awarded to his wife, Mrs Maria Botes, to whom he was married out of community of property and who was pregnant at the time. The bequest is subject to a condition that, after the expiry of such *usufruct*

the property be sold and the proceeds of the sale should devolve on their unborn child. Draft the necessary application to give effect to the said provisions of the above Will.

QUESTION 4 **[8]**

Mr Jurie Botes had bequeathed the property to his unemployed wife and she is unable without hardship to pay the costs involved in transferring the immovable property transferred in to her name, to which she is entitled according to the Liquidation and Distribution account. The surviving spouse wants peace of mind knowing that she is going to receive the property but is aware that transfer is not possible due to her financial constrain.

Draft the necessary application to give effect to wishes of the surviving.

QUESTION 5 **[10]**

Mortgage bond No. B829/2018 was passed by Fanus Swanepoel (unmarried) in favour of Christo Muller (married out of community of property) for the sum of R50 000,00. The capital sum bears interest at the rate of 17% per annum payable annually in arrears on 30 June each year. The capital is repayable on 30 June 2024.

Swanepoel requests Muller to extend the repayment date to 30 June 2026, to which Muller agrees provided that the interest rate is increased to 20% per annum with effect from 1 July 2022 and provided further that, with effect from that date the interest is to be payable quarterly in arrear, the first payment to be made on 30 September 2022.

Fanus Swanepoel married Gerda Swanepoel in community of property on 1 May 2019.

Draw the document which is required for registration purposes in order to give effect to the new arrangements.

QUESTION 6 **[10]**

You have, on behalf of your client, opened a Sectional Title Register. No transfers of units in the scheme have as yet been registered. You now have instructions to register the first transfer of a unit, being Unit No 1. Unit 1 has the exclusive use of a garden area, described as G1.

List the documents which you must lodge in the Deeds Office in order to achieve registration of the transfer of the unit and exclusive use area.

QUESTION 7 **[40]**

The following facts apply to the circumstances:

James Viljoen is married in community of property to Sally Viljoen.

Edward Jones, married Charmaine in 2007 while he was studying in France for two years.

Yvette Smith married Albert Smith in 2006. The marriage was out of community of property. Albert died in 2008 and Yvette resumed her maiden name, Du Preez. James, Edward and Yvette carry on business as Viljoen and Associates.

Portion 1 of Erf 114 in the township Solwezi was registered in their names carrying on business in partnership as Viljoen and Associates in 2008.

The transfer was registered under Deed of Transfer No. T4276/2008 with diagram S.G. No A351/2008 annexed thereto.

James is now retiring from the partnership and his share in the property is being taken over by Edward and Yvette who will continue the business as remaining partners.

The name of the new partnership will be Jones and Du Preez Decorators.

- 7.1 Draw the Deed of Transfer up to the end of the extending clause required to give effect to the aforementioned agreement in so far as Portion 1 of Erf 114 Solwezi is concerned. Invent your own further particulars. (20)
- 7.2 The property is subject to a mortgage bond. How will you deal with this bond? The bond is not to be cancelled. Discuss briefly. (6)
- 7.3 List the documents which must be lodged with the new deed of transfer. (6)
- 7.4 What would the procedure be if the partnership was dissolved, and the partners agreed that Portion 1 of Erf 114 Solwezi was to be awarded to all three former partners? Discuss briefly. (8)

QUESTION 8

[10]

Describe the transferee/s, including the reference to successors in title, in a deed of transfer in respect of an erf in a township in the following cases, providing your own further particulars.

The property was purchased by:

- 8.1 Joe Harvey, who died before taking transfer. Joe Harvey was married to Maggie Harvey in community of property at the time of his death. (3)
- 8.2 John Healey, who married Maggie Healey in England while on holiday there. John Healey has lived in Bloemfontein since his birth. He was advised at the time of the marriage, that the marriage would be out of community of property and that it was not necessary to enter into any form of contract with his intended wife. (2)
- 8.3 Ashley Woods, who married Sandy Woods in England, where he was born and was living at the time of the marriage. (2)
- 8.4 Christa Botha, who is married in community of property to Allan Botha. She is paying for the property with money she inherited and which inheritance was expressly excluded from the community of property of any marriage she may enter into. (3)

QUESTION 9**[40]**

Greg Warner and David Mtshali are civil union partners in a civil partnership concluded on the 3rd of July 2007 in terms of the Civil Union Act No. 17/2006. They have registered an antenuptial contract. They are the joint registered owners of Section 132 and 133 in the scheme known as "Happy Days". The sections were registered in their names by virtue of Deed of Transfer ST 99/2003 and their marital status is given therein as "unmarried".

- 9.1 Greg and David wish to have their changed status recorded in the Deeds Office. Prepare the application required to record their changed status in Deed of Transfer ST 99/2003. (15)
- 9.2 Assume that their changed status has now been recorded on Deed of Transfer ST 99/2003. Greg Warner needs to borrow money and has a friend, Paul, who is prepared to lend him the money on condition that Greg registers a mortgage bond in his favour over the share of Greg in the two sections. David is not prepared to have his share in the sections made subject to a bond. Prepare the necessary application and deed required to enable Greg to register a mortgage bond over his share in the property. You are not required to prepare the mortgage bond. (20)
- 9.3 Assume that the document/s referred to in 9.2 has been registered. In the interim, Greg has registered a notarial pre-emptive right in favour of his mother over his share in the property under SK 324/2010. You must now register the mortgage bond by Greg in favour of Paul. Prepare only the property/security clause as it will appear in the bond to be registered. Paul is not concerned about the changed circumstances. (5)

QUESTION 10**[3]**

The provisional trustee in an insolvent estate must urgently sell an immovable property belonging to the insolvent before the second meeting of creditors can be held. May he do so? Discuss briefly.

QUESTION 11**[10]**

Draw only the causa clause of a deed of transfer in the following cases. Commence your answer with: "and the Appearer declared that ...". Provide your own details in your answers.

- 11.1 The property was sold by the sheriff in execution. (5)
- 11.2 The property is registered in the name of a fiduciary who has died and who is survived by the only fideicommissarius. (3)
- 11.3 The property has been donated by the father to his son subject to a life usufruct in favour of the father and his wife who are married in community of property. (2)

QUESTION 12**[10]**

ABC Bank Ltd has lost mortgage bond B12/2018 registered in its favour by John Tshabalala, married to Mary Tshabalala which marriage is governed by the laws of Zimbabwe. The bank requires a certified copy of the bond to enable it to cede the bond to XYZ Bank. You have received instructions to attend to the matter on behalf of ABC Bank Ltd.

Describe the procedure to be followed to comply with your instructions, list the sequence of transactions to be registered in the Deeds Office and documents to be lodged.

QUESTION 13**[13]**

William Kruger owns Erf 15 Golden Place and has sold Portion 1 thereof to Glen Cooper. It is a condition of sale that the seller shall, simultaneously with the transfer of Portion 1, retain a right of way 3 metres wide across Portion 1 to Denver Street. The Local Authority, when consenting to the said subdivision imposed as a condition of subdivision that Portion 1 be made subject to a 2 metre wide servitude along any two boundaries thereof other than a street boundary in favour of the Local Authority.

- a) State briefly in which manner you will create these servitudes. (3)
- b) Draft the two servitudes as they must appear in the title deed of Portion 1. (10)

QUESTION 14**[14]**

Erf 123 Hillcrest is registered in the name of Donald Duck and Daisy Duck. The parties were married out of community of property to each other. Donald Duck was sequestrated on the 1st May 2015 and Paul Rush was appointed as the Trustee of his insolvent estate. The trustee, with the consent of the spouse and the consent of the Master of the High Court, sold the property for R2 500 000.00 to Bargain Properties (Pty) Ltd. The property was bonded to Liberal Bank and the sum of R1 000 000.00 was still owing as at date of sequestration.

Inventing your own particulars:

- 14.1 Draw the power of attorney to pass transfer to Bargain Properties (Pty) Ltd. (8)
- 14.2 List the sequence of transactions and the documents to be lodged in the Deeds Office. (3)
- 14.3 Calculate the amount of transfer duty payable. Show your calculations in detail. (3)

- THE END -
