

THE REPUBLIC OF SOUTH AFRICA

CONVEYANCING EXAMINATION

PART 2

13 APRIL 2022

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: [200]

QUESTION 1**[60]**

John Dolly, a widower and owner of the property, a sectional title unit number 200 with a duly registered parking number P200 under scheme number 789/1987 died on 8 January 2021 and nominated his children without naming them to be the sole and universal heirs of his entire estate.

The deceased was the developer of the scheme. In terms of the deceased's will dated 1st January 2020, there is a further condition in the will which reads as follows: "*The inheritance of my heirs shall not form part of the community of property of a present or future marriage.*"

Mr Cassper Nyovest is appointed executor of the estate, he informs you that the children are South African and their details are the following:

- 1) Keagan Dolly born on the 10th October 1988 married to Tracy Dolly, which marriage is governed by a duly executed and registered antenuptial contract, subject to accrual;
 - 2) Khama Billiat, born on the 09th May 2008 and
 - 3) the now deceased Jane Dolly (she died on 09 September 2021).
- 1.1 Draw the Power of attorney to pass transfer inventing such further details as may be required; (24)
 - 1.2 Draw the deed of transfer only from the *causa* up to the consideration clause; (19)
 - 1.3 List the documents to be lodged with the Deeds Office for registration; (13)
 - 1.4 Imagine that the property belonged to John Dolly's wife alone and the deceased had massed his estate with that of the wife in a joint will and she adiated. Who would be the transferor/s in the power of attorney to transfer. Motivate your answer. (4)

QUESTION 2**[15]**

Dims Pty Ltd is the registered owner of Erf 2888 Bendor Extension 30 Township, measuring 5000 square metres and has applied for the subdivision thereof with the relevant local authority. The subdivision has been approved and is depicted on General Plan SG 1652/2020, with the following note endorsed on the plan: "*Portion 1, 3, 5, 7, 9 are subject to a right of way servitude depicted on figures A, B, C, D, A in favour of the general public*".

- 2.1 Draft the necessary application for the registration of the general plan and opening of subdivision register. Use your own further details. (10)
- 2.2 List the documents to be lodged at the Registrar of Deeds to register the above application. (5)

QUESTION 3**[22]**

Jane Foster inherited a property known as erf 1 Bendor Township from her late parents. A year later she purchased the adjacent property, erf 2 Bendor Township which was financed through ABC Bank Ltd and the said erf 2 was mortgaged under B123/2018 to secure the finance.

Jane Foster has applied for a sectional title development on both erven with the relevant local authority, which has been approved. Jane has agreed to notarially tie the 2 (two) erven and the bank has consented to the opening of the sectional title scheme subject to the bank's bond. Jane is also prepared to sign all documents required to secure the rights of the bank.

The sectional title plans have been approved by the surveyor general under no. D12/2020 and the scheme is to be known as "MULBERRY".

- 3.1 You are instructed by the mortgagee, ABC Bank Ltd to draft the necessary document/s to secure its interest without cancelling the bond B123/2018. Draft the necessary document/s to be lodged with the opening of the sectional title register to secure the bank's interests herein. (10)
- 3.2 List all the documents required for registration of a sectional title scheme, which includes extension of a scheme by addition of sections and exclusive use areas and it all being subject to the mortgage bond. (12)

QUESTION 4**[12]**

Mr Clark Kent is the owner of the property, Erf 369 Clubview, subject to a lifelong usufruct in favour of his now deceased mother, Martha Kent.

Clark had taken a bond on the property and has been unable to pay the bond on his property. The bank has foreclosed. The Sheriff is appointed to transfer the attached property and you are appointed as the conveyancer to attend to the transfer.

The order does not deal in anyway with the usufruct. As a result, the sheriff refuses to deal with or sign any document to deal with the said usufruct.

- 4.1 Who would sign the above document to deal with the usufruct and on what authority? (2)
- 4.2 Draft the necessary document/s to deal with the usufruct. Use your own further information. (10)

QUESTION 5**[45]**

The undermentioned properties are registered in the names of the TCM Trust IT No. 1007/2004 and Preferred Development CC Registration Number 2001/011133/23 in undivided equal shares, namely:

- A. Portion 1 of the Farm Bendor no. 753, Measuring 2,5000 hectares – Held by Certificate of Consolidated Title T123/2008, subject to the following conditions:

- a. The property shall not be subjected to a “land development” process (as defined in SPLUMA) save with the written consent of the Local Authority.
- b. The property is subject to a 4.05-meters wide right of way servitude in favour of XYZ (Pty) Ltd as will more fully appear in the Notarial Deed No. K111/2004S with diagram annexed to Deed of Transfer T2015/2004.
- c. **“Die eienaar sal nie geregtig wees om die eiendom of enige onderverdeling daarvan oor te dra sonder 'n uitklaringsertifikaat van die BENDOR HOMEOWNERS' ASSOCIATION NPC”.*
- d. That the rights to all minerals reserved in favour of Kalla Investments Limited;

*(*translation of condition 'c': “The owner will not be entitled to transfer the erf or any subdivision without a clearance certificate from the BENDOR HOMEOWNERS' ASSOCIATION NPC”)*

- B. Portion 2 of the Farm Bendor no. 753, Measuring 2,1000 hectares – Held by Deed of Transfer T133/2004, subject to the following conditions:
 - a. The property shall not be subdivided nor consolidated save with the written consent of the Local Authority.
 - b. The property is subject to a servitude of right of way in favour of Portion 1 of the Farm Bendor no. 753;
 - c. The property is subject to a 4.00-meters wide right of way servitude in favour of XYZ (Pty) Ltd as will more fully appear in the Notarial Deed No. K113/2004S with diagram annexed to Deed of Transfer T1013/2004;
 - d. That the rights to all minerals reserved in favour of Kalla Investments Limited;

The above two properties are next door to each other and the Trustees of the Trust and the Members of the CC have decided to consolidate the properties.

There is a Caveat noted against Portion 2 of the Farm Bendor no. 753 to the effect that a court order has been granted for the purpose of authorising the insertion of the BENDOR HOMEOWNERS' ASSOCIATION NPC condition – same as the condition to which Portion 1 is subject to.

The approved diagram SG No. 1007/2014 reflects the following data:

- a. "Components:
 1. The figure AbcD represents Ptn 1 of the Farm BENDOR no. 753;
 2. The figure aBCd represents Ptn 2 of the Farm BENDOR no. 753;

And

- b. "Servitude notes:
 1. The line vx represents the centre line of a servitude 4.05 metres wide;
 2. The line BC represents the centre line of a servitude 4.00 metres wide;

- 5.1 Draft the application by the owners for the issue of the necessary title on account of the stated facts. Provide your own details where required. The description of the parties and the properties must conform to the deeds practice; (8)
- 5.2 Draft the title deed in terms of the stated facts. The description of the parties, the properties and qualification of conditions must conform to the deeds practice. Provide your own facts where necessary; (15)
- 5.3 Draft the necessary document to protect the interest of the mortgagee in the event that Portion 1 of the Farm Bendor no. 753 and Portion 2 of the Farm Bendor no. 753 are both mortgaged under the same bond, namely B654/2019. Use your own further particulars; (10)
- 5.4 Draft the necessary document to protect the interest of the mortgagee in the event that only Portion 1 of the Farm Bendor no. 753 is mortgaged under the bond B654/2019. Use your own further particulars. (12)

QUESTION 6

[15]

John Wick, a widower, is the registered owner of Erf 8956 Turfloop held by Deed of transfer T951/2020. He received transfer thereof from the estate of his late wife Mary Wick, who died in April 2020 and to whom he had been married out of community of property. The property has been subdivided and the remainder has been sold to a private company, Spar Supermarket incorporated in Germany and registered in South Africa as an external company, in terms of a deed of sale dated the 20th July 2021.

The said Portion 1 is held by Certificate of Registered Title and a new parent diagram under SG No. A357/2021 has been duly framed.

The extending clause in the Deed of transfer T951/2020 reads:

“First transferred by Deed of Transfer Number T4568/1988 with General Plan SG Number L562/1986 relating thereto and held by Deed of Transfer Number T7423/2000”.

Draw only the portion of the deed of transfer commencing from and inclusive of the description of the transferor(s) up to the extending clause. Use your own further particulars where necessary.

QUESTION 7

[15]

You receive written instruction from Mr Borris A Johnson (a famous bachelor) born 19 June 1984 residing at 10 Downing Street, East London, to draft and register a mortgage bond in his favour to secure a loan in the amount of £100 000.00 (One Hundred Thousand Pounds) he made to a company under business rescue, being ABC (Pty) Ltd Registration number 2000/000002/07. The exchange rate against the Rand is currently £1.00 equates to R10.00 on date on the instruction but is at R11.00 on date of lodgement. Mr Borris A Johnson has not been issued with a South African identity document.

Inventing such details as may be necessary, draw the following in respect of the mortgage bond in favour of your clients: (do not draw the entire bond)

- 7.1 The description of the Mortgagor; (2)
- 7.2 The description of the Mortgagee; (5)
- 7.3 The clause(s) whereby the Mortgagor binds himself to the Mortgagee and the cause of debt and the amount of such debt. (4)
- 7.4 List the documents to be lodged for registration of the above bond. (4)

QUESTION 8

[16]

Ms Aneke van der Merwe, a retiring attorney, has been practising as a sole proprietor for a number of years. Ms van der Merwe is registered for VAT for the purpose of her practice. She owns 2 (two) properties in her name, being Erf 321 Makotopong where she practices and Erf 946 Mankweng-C where she stays.

She enters into partnership agreement with her then professional assistant, Mr Matome Shadung in respect of the law firm to the effect that the partners are to share the profits equally.

Mr Shadung acquired the 50% partnership interest at R3,450,000.00 including the property with an agreed total value of R4,400,000.00. The purchase price clause does not disclose whether or not VAT is included or excluded.

- 8.1 What tax, if any, would be payable for the purchase by Mr Shadung of the 50% partnership interest, inclusive of Erf 946 Mankweng-C. (2)
- 8.2 If any tax is payable, how much would that be? (2)
- 8.3 Who would be liable for the payment of the tax, if any? (4)
- 8.4 The Transfer Duty Act provides that duty must be paid within a period of 6 (six) months from date of acquisition failing which the purchaser would be liable for penalty. Discuss how the liability would be affected by any suspensive conditions contained in the agreement and how the penalty may be avoided. (4)
- 8.5 Is transfer duty payable on the acquisition of a mortgage bond registered over an immovable property? Discuss briefly. (2)
- 8.6 What tax, if any, would be payable for the purchase of Erf 321 Makotopong? (2)

- THE END -
