

# DIE REPUBLIEK VAN SUID-AFRIKA

## TRANSPORTBESORGINDEKSAMEN

### DEEL 2

11 MEI 2016

2 Uur

14:00-16:15

*Kandidate kry 15 minute om die vraestel deur te lees voor hulle begin skryf. Geen kandidaat mag tydens hierdie tyd in die antwoordboek begin skryf nie. Die eksamen van 2 uur volg dan.*

#### LET ASSEBLIEF OP DIE VOLGENDE:

1. Skryf asseblief die nommer wat aan u toegeken is op die omslag van u antwoordboek.
2. Kandidate moet leesbaar en netjies skryf. Wat vir die kandidaat (wat aan sy eie handskrif gewoond is) leesbaar mag lyk, is nie altyd leesbaar vir die eksaminatore nie. Daar kan nie van die eksaminatore verwag word om skrif te ontsyfer nie, nog minder is dit regverdig (teenoor ander kandidate) om te verwag dat die eksaminatore dit moet doen. Indien die handskrif van die kandidaat nie duidelik leesbaar vir die eksaminatore is nie, loop die kandidaat gevaar om baie punte te verloor. **GEBRUIK SLEGS 'N VUL- OF BALPUNTPEN VIR U ANTWOORDE.**
3. Gebruik asseblief net een kant van elke bladsy.
4. Aangesien baie van die vrae op artikels en/of regulasies van die betrokke Wette gebaseer is, sal die antwoorde van selfsprekend of korrek of verkeerd wees.
5. Tensy daar 'n spesiale rede bestaan, word 'n kandidaat nie vir 'n monderling ingeroep as 'n totaal van 50% en meer behaal is nie. Indien 'n kandidaat 'n totaal van tussen 40% en 49% behaal slaag hulle nie die eksamen nie en sal hy/sy 'n mondelinge moet aflê ten einde die eksaminatore te oortuig dat hy/sy wel oor voldoende kennis beskik om die eksamen te slaag. Kandidate wat minder as 40% behaal sal nie kwalifiseer vir 'n mondelinge nie en drup dus hierdie eksamen.

**TOTALE PUNTE: [100]**

# THE REPUBLIC OF SOUTH AFRICA

## CONVEYANCING EXAMINATION

### PART 2

11 MAY 2016

2 Hours

14:00-16:15

*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 2 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. As many of the questions are based on sections and/or regulations of the relevant Acts, the answers thereto will obviously be either correct or incorrect.
5. 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: [100]**

**VRAAG 1 [3]**

Jou kliënt, Gary wat binne gemeenskap van goedere getroud is met Sandra, het sy eiendom verkoop aan Colin wat binne gemeenskap van goedere getroud is met Lisa. Die eiendom is verkoop in terme van 'n kontrak soos uiteengesit in Artikel 1 van die Wet op Vervreemding van Grond 68 van 1981. Bespreek of Sandra en Lisa toestemming moet gee tot die kooporeenkoms.

**VRAAG 2 [3]**

Sham Singh is op 30 April 2015 oorlede en in terme van hulle gesamentlike testament van Sham en sy vrou Ria Singh met wie hy binne gemeenskap van goedere getroud was, is die eiendom nagelaat aan hul seun Jason onderhewig aan 'n habitatio ten gunste van Ria, die langlewende gade wat geadieër het in terme van die testament. Die waarde van die eiendom vir boedelbelasting doeleindes beloop R2 500 000,00. Is daar enige hereregte betaalbaar in terme van die oordrag, indien daar is, bespreek hoe die hereregte bereken moet word.

**VRAAG 3 [13]**

Beskryf die volgende natuurlike persone in die vestigingsklousule van die transportakte. Voorsien jou eie besonderhede indien nodig:

- a) Gades wat getroud is in terme van 'n gebruikelike Moslem huwelik wat eiendom gekoop het. (3)
- b) Partye wat gedomisilieër is in Zimbabwe. Die eiendom moet in albei gades se naam geregistreer word. (4)
- c) Die lanskewende gade en minderjarige kind wat albei eiendom bekom in terme van die testament van die oorledene. Die testament bevat geen beperkende voorwaardes nie. Die langlewende gade is weer getroud. Sy het 'n huweliksvoorwaardekontrak gesluit met die uitsluiting van die aanwasbedeling. (6)

**QUESTION 1 [3]**

Your client Gary, who is married in community of property to Sandra, has sold his land to Colin who is married in community of property to Lisa. The land is sold in terms of a contract as defined in section 1 of the Alienation of Land Act 68 of 1981. Discuss whether Sandra and Lisa must consent to the entry into the contract.

**QUESTION 2 [3]**

Sham Singh died on the 30<sup>th</sup> April 2015 and in terms of the joint will of himself and his spouse Ria Singh, to whom he was married in community of property, the immovable property was bequeathed to their son Jason, subject to a habitatio in favour of Ria, the surviving spouse, who adiated in terms of the Will. The value of the immovable property for estate duty purposes is R2 500 000,00. Is there any transfer duty payable on the said transfer of the immovable property, and if so, discuss how the transfer duty must be calculated?

**QUESTION 3 [13]**

Describe the following natural persons in a vesting clause of a Deed of Transfer? Supply any additional details as may be required:

- a) Persons married in terms of a customary Muslim marriage who have bought property. (3)
- b) Parties domiciled in Zimbabwe. The property is to be registered in both spouses names. (4)
- c) The surviving spouse and minor who are both acquiring property in terms of the Will of the deceased. The Will contains no onerous conditions. The surviving spouse has remarried. She has entered into an antenuptial contract with the exclusion of the accrual system. (6)

**VRAAG 4** [20]

Die Ethekwini Munisipaliteit is die geregistreerde eienaar van Gedeelte 9 van die Plaas Newlands en word gehou kragtens Sertifikaat van Geregistreerde titel T8597/1988. Newlands dorpsgebied is gestig op die voorgenoemde eiendom wat bestaan uit erwe 1833 tot 1838 soos aangedui op Algemene Plan SG NO. 3235/1997 wat goedgekeur is deur die Landmeter Generaal.

- a) Jy ontvang instruksies om Erf 1836 Newlands, groot 1400 vierkante meter te transporteer aan Mnr X. Stel die volledige eiendomsbeskrywing asook uitstrekkingsklousule op soos wat dit in die transportakte wat geregistreer moet word voorkom. Gebruik jou eie verdere besonderhede. (4)
- b) Jy transporteer gelyktydig die transport vanaf Mnr X aan Mnr Y. Stel die uitstrekkingsklousule op soos wat dit sal voorkom in die transportakte. (4)
- c) Mnr Y se eiendom is oorgedra aan hom en word gehou kragtens Akte van Transport T1425/2015. Mnr Y het die eiendom onderverdeel in Gedeelte 1, groot 800 vierkante meter soos aangedui op onderverdelingsdiagram SG 1412/2015. Mnr Y het die Restant verkoop aan Mr Z en bly die eienaar van die onderverdeelde gedeelte.
- i) Wat moet gedoen word voordat die restant getransporteer kan word? (2)
- ii) Stel die uitstrekkingsklousule op soos wat dit sal voorkom in die akte van transport aan Mnr Z. (3)
- iii) Lys die dokumente wat ingedien moet word in terme van jou antwoorde in vraag C (i) en (ii). (7)

**QUESTION 4** [20]

The Ethekwini Municipality is the registered owner of Portion 9 of the Farm Newlands under Certificate of Registered Title T8597/1988. Newlands Township has been laid out on the aforesaid property comprising ERVEN 1833 to 1838 in accordance with General Plan S G NO 3235/1997 approved by the Surveyor General.

- a) You are instructed to transfer Erf 1836 Newlands in extent 1400 square metres to Mr X. Draw the entire property description and extending clause as it will appear in the deed of transfer you have to register. Use your own further particulars. (4)
- b) You are simultaneously attending to the registration of transfer from Mr X to Mr Y. Draw the extending clause as it will appear in that transfer. (4)
- c) Mr Y received transfer of his property under Deed of Transfer T 1425/2015. Mr Y has subdivided the Erf into Portion 1 in extent 800 square metres as per Sub-divisional Diagram SG 1412/2015. Mr Y has sold the Remainder to Mr Z and will retain the subdivided Portion.
- i) Which acts of registration must take place before the Remainder can be transferred? (2)
- ii) Draw the extending clause as it will appear in the Deed of Transfer to Mr Z. (3)
- iii) List the documents to be lodged in respect of the transactions referred to in C (i) and (ii). (7)

**VRAAG 5** [5]

- a) 'n Onteieningsoordrag wat geregistreer word in terme van artikel 31 van die Registrasie van Aktes wet word daar geen volmag ingedien nie. Wat sal jy in die plek van die volmag indien? (1)
- b) Die titelakte kan nie opgespoor word nie met verwysing na die oordrag in (a). Wat sal jy indien by die akteskantoor? (2)
- c) Wat, indien enige, word benodig indien die eiendom onderhewig is aan 'n verband? (1)
- d) Moet 'n uitklaringsertifikaat ingedien word onder omstandighede soos uiteengesit in (a)? (1)

**VRAAG 6** [12]

Mathew Crawley is oorlede op 15 April 2013 en het geen testament agtergelaat nie. Wie sal geregtig wees op sy bates in die volgende gevalle en wat sal die verdeling wees?:

- 6.1 Hy word oorleef deur sy vrou en drie kinders. Die huwelik was buiteweg van goedere en die balans vir verdeling is R1 500 000,00. (4)
- 6.2 Hy was ongetroud en word oorleef deur sy pa, twee broers en twee susterskinders van sy suster wat drie jaar gelede oorlede is. Die balans vir verdeling is R1 300 000,00. (4)
- 6.3 Hy was getroud buite gemeenskap van goedere en word oorleef deur sy vrou, 'n kind uit sy huidige huwelik, 'n aangenome kind en 'n stiefkind wat die kind is van sy vorige vrou. Die balans vir verdeling is R4 800 000,00. (4)

**QUESTION 5** [5]

- a) In a transfer pursuant to an expropriation in terms of section 31 of the Deeds Registries Act no power of attorney is lodged. What would you lodge in place thereof? (1)
- b) The title deed cannot be obtained in the circumstances mentioned in (a) above. What must you lodge with the Registrar of Deeds? (2)
- c) What, if any, is required if the property is subject to a bond? (1)
- d) Is a rates clearance certificate required in the circumstances mentioned in (a) above? (1)

**QUESTION 6** [12]

Mathew Crawley died on 15 April 2013 intestate. Who will be entitled to inherit his estate in the following instances, and what will the division be?:

- 6.1 He is survived by his wife and three children. The marriage was out of community of property and the balance for distribution is R1 500 000,00. (4)
- 6.2 He was a bachelor and is survived by his father, two brothers and two children of his sister who died three years ago. The balance for distribution is R1 300 000,00. (4)
- 6.3 He was married out of community of property and is survived by his wife, one child born of that marriage, an adopted child and a stepchild, being the child of his wife from her previous marriage. The balance for distribution is R4 800 000,00. (4)

**VRAAG 7 [8]**

Erf 675 Durban word in gelyke dele gesamentlik besit deur Prem Singh gehou kragtens akte van transport T 1062/2012 en deur Michael Brown kragtens akte van transport T 472/2013 onderskeidelik.

Verduidelik kortliks watter regshandelinge, indien enige, voor of gelyktydig met registrasie moet geskied in die volgende gevalle: (Gee kort redes vir jou antwoorde en verwys na die relevante artikels in die Akteswet).

- 7.1 Prem het aansoek gedoen by Swindle bank vir 'n lening van R50 000,00, die bank het toegestem tot die lening onderhewig aan die voorwaarde dat hy 'n eerste verband registreer oor sy halwe aandeel. (4)
- 7.2 Michael Brown het helfte van sy aandeel (nl 'n kwart aandeel) geskenk aan sy vrou met wie hy buite gemeenskap van goedere getroud is en jy het instruksies ontvang om die oordrag te behartig. (4)

**VRAAG 8 [5]**

'n Deeltitelplan van uitbreiding moet geregistreer word in terme van artikel 25 van die deeltitelwet 95/1986, die plan verwys na 'n servituut van oorskryding op aangrensende grond, Erf 14 Bellville. Die aangrensende eiendom is onderhewig aan 'n verband. Wie moet die Notariële aktes teken om die servituut te registreer en wie moet toestemming gee. Motiveer jou antwoord.

**VRAAG 9 [13]**

- 9.1 Watter prosedure moet gevolg word as die akteskantoor se afskrif en jou kliënt se afskrif van die skedule in terme van artikel 11(3)(b) van die deeltitelwet 95/1986 verlore of vernietig is. Motiveer jou antwoord. (3)

**QUESTION 7 [8]**

Erf 675 Durban is jointly owned in equal shares by Prem Singh under Deed of Transfer T 1062/2012, and by Michael Brown under Deed of Transfer T 472/2013 respectively.

Explain briefly what acts of registration (if any), need to be done prior to or simultaneously with the registration of each of the following transactions: (Provide brief reasons for your answers and make reference to the relevant section(s) of the Deeds Registries Act).

- 7.1 Prem has applied to Swindle Bank for a loan of R50 000,00 and Swindle Bank has agreed to grant him the loan provided he registers a first mortgage bond in favour of the bank over his half share of the property. (4)
- 7.2 Michael Brown has donated a half of his share of the property (i.e a quarter share of the property) to his wife to whom he is married out of community of property and you have been instructed to attend to the transfer. (4)

**QUESTION 8 [5]**

A sectional plan of extension to be registered in terms of section 25 of the Sectional titles Act 95/1986 refers to a servitude of encroachment on neighbouring land being Erf 14 Bellville. The neighbouring land is subject to a registered mortgage bond. Who must sign the Notarial deeds required to register such a servitude and who must consent thereto? Motivate your answer.

**QUESTION 9 [13]**

- 9.1 What procedure will be necessary if the deeds office copy and your client's copy of the Schedule in terms of section 11 (3) (b) of the Sectional titles Act 95/1986 has been lost or destroyed. Motivate your answer. (3)

9.2 Watter prosedure moet gevolg word as daar na registrasie vasgestel word dat die gereserveerde reg van uitbreiding in terme van artikel 25 van die deeltitelwet ten gunste van die ontwikkelaar nie melding maak van die tyd waarin die reg uitgeoefen moet word nie. Verwys na die verskil in die prosedures, indien enige, waar die regspersoon reeds bestaan en waar die regspersoon nog nie bestaan nie.

(6)

9.3 Waar die ontwikkelaar 'n reg van uitbreiding in terme van artikel 25 van die deeltitelwet gereserveer het maar die reg het reeds verval, mag die ontwikkelaar voor die stigting van die regspersoon 'n verdere of 'n ander reg in terme van artikel 25 (6A) van die deeltitelwet reserveer. Indien ja, beskryf die prosedure wat gevolg moet word voor of gelyktydig met die reservering van die verdere of ander reg van uitbreiding.

(4)

9.2 What procedure must be followed where it is ascertained, subsequent to registration of a reservation of extension in terms of section 25 of the sectional Titles Act 95/1986 in favour of the developer, that the said right does not disclose a period of time in which the right must be exercised? In your answer you must refer to the difference in procedure, if any, where the body corporate for the scheme is already in existence and where it is not yet in existence.

(6)

9.3 Where the developer has reserved a right of extension in terms of section 25 of the Sectional titles Act, but such right of extension has lapsed due to the effluxion of time, may such developer, prior to the establishment of the body corporate reserve a further or another right, given the wording of section 25 (6A) of the sectional Titles Act. If your answer is affirmative, you are required to describe any other procedure that may be required before or simultaneously with the reservation of the further or other right of extension.

(4)

**VRAAG 10**

**[14]**

Is hereregte of BTW betaalbaar in die volgende gevalle? Wat is die bedrag van die hereregte of BTW wat betaalbaar is? Motiveer jou antwoord.

10.1 Mariam Khan, onlangs geskei, verhuur kamers in haar huis om haar inkomste aan te vul aangesien sy nie altyd haar onderhoud betyds ontvang vanaf haar eks man nie. Mariam verkoop haar eiendom aan 'n besigheidsman en eiendomsontwikkelaar Shakes Mashaba, wat geregistreer is vir BTW. Shakes beoog om die huidige huurkontrakte oor te neem. Die koopprys beloop R2 000 000,00.

(3)

10.2 Susan Harris, getroud buite gemeenskap van goedere aan Paul Harris is die geregistreerde eienaar van Erf 555 Bluff.

**QUESTION 10**

**[14]**

Will transfer duty or Vat be payable in the following instances? State the amount of whichever tax is payable. Motivate your answer briefly.

10.1 Mariam Khan, recently divorced, lets out individual rooms in her house to supplement her income as her ex-husband is very erratic with maintenance payments. Mariam sells her property to businessman and property investor Shakes Mashaba, who is a registered Vat Vendor. Shakes intends to take over the existing tenants. The purchase price of the property is R2 000 000,00.

(3)

10.2 Susan Harris, married out of community of property to Paul Harris is the registered owner of Erf 555 Bluff. Paul runs his

Paul bedryf sy spyseniering-onderneming vanaf die perseël. Paul is geregistreer vir BTW. Susan verkoop haar eiendom aan Paul se besigheidsvennoot Cindy vir die bedrag van R2 500 000,00. Cindy wil steeds die besigheid bedryf vanaf die perseël en het al die gereedskap gekoop van Paul. (3)

10.3 A, is geregistreer vir BTW en verkoop sy eiendom wat deel vorm van sy onderneming aan B as 'n lopende saak. B is ook geregistreer vir BTW. Die partye het die koopkontrak gesluit maar geen verwysing gemaak van die feit dat die eiendom as 'n lopende saak verkoop word nie. Wat is die koers wat betaalbaar is ten opsigte van die BTW? Motiveer jou antwoord. (3)

10.4 Mnr X is geregistreer vir BTW en verkoop sy onroerende eiendom wat deel vorm van sy onderneming aan Mnr Y as a lopende saak. Mnr Y is nie geregistreer vir BTW nie. Die ooreenkoms meld dat die eiendom verkoop word as 'n lopende saak en dat dit 'n inkomste-genererende aktiwiteit is op dag van oordrag. Wat is die koers waarop BTW betaal moet word? Motiveer jou antwoord kortliks. (3)

10.5 Chris en Kelly Clarke was getroud binne gemeenskap van goedere. Hulle het 'n gesamentlike testament uitgevoer en boedelsamesmelting het plaasgevind, die langlewende gade is aangestel as die enigste erfgenaam onderhewig daaraan dat 'n fideikommisa ten gunste van hul seun Harry geregistreer word. Chris Clarke is oorlede en Kelly Clarke het geadieër. Erf 323 Montrose is oorgedra aan Kelly onderhewig aan die fideikommisa ten gunste van Harry. Kelly is op 10 Augustus 2015 oorlede en die eiendom moet nou oorgedra word aan Harry. Die waarde van die eiendom is R750 000,00. (2)

catering business from the outbuilding on the premises. Paul is a registered Vat Vendor. Susan sells her property to Paul's business partner Cindy for the sum of R2 500 000,00. Cindy in turn will continue to run the catering business and has purchased all the equipment from Paul. (3)

10.3 A, a registered VAT vendor sells an immovable property which is part of an enterprise, to B as a going concern. B is also a registered VAT vendor. The parties concluded the sale privately and no mention was made that the property is sold as a going concern. At which rate will VAT be payable. Motivate your answer. (3)

10.4 Mr X, a registered Vat Vendor sells his immovable property, which is part of an enterprise, to Mr Y as a going concern. Mr Y is not a registered Vat Vendor. The agreement provides that the property is being sold as a going concern and that it will be an income producing activity on date of transfer. At which rate will VAT be payable? Motivate briefly. (3)

10.5 Chris and Kelly Clarke were married in community of property to each other. They executed a joint Will in terms of which they massed their estates and appointed the survivor as sole heir subject to a fideicommissum in favour of their son Harry. Chris Clarke died. Kelly Clarke adiated and transfer of Erf 323 Montrose was passed in her favour subject to the fideicommissum. Kelly died on the 10<sup>th</sup> August 2015 and transfer is to be passed to her son Harry. The property is valued at R750 000,00. (2)

**VRAAG 11**

**[4]**

As die eienaar van onroerende eiendom, waaroor 'n verband geregistreer is, die eiendom transporteer aan 'n ander persoon, kan die Registrateur van Aktes die transportnemer vervang as skuldenaar onder die verband in terme van artikel 57 van die Akteswet. Daar is seker gevalle waar die Registrateur nie toestemming sal gee nie. Lys die spesifieke gevalle.

**QUESTION 11**

**[4]**

If the owner of immovable property which is burdened by a mortgage bond transfers the whole of such land to another person, the Registrar of Deeds may substitute the transferee for the transferor as debtor in respect of the bond registered over such land in terms of Section 57 of the Deeds Registries Act. There are however certain circumstances under which the Registrar will not grant the permission. List these circumstances.

- DIE EINDE -

- THE END -

LAW SOCIETY  
OF SOUTH AFRICA