

DIE REPUBLIEK VAN SUID-AFRIKA

TRANSPORTBESORGINDEKSAMEN

DEEL 2

5 SEPTEMBER 2018 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 druij dus hierdie eksamen.

TOTALE PUNTE: [100]

THE REPUBLIC OF SOUTH AFRICA

CONVEYANCING EXAMINATION

PART 2

5 SEPTEMBER 2018 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 [5]

- 1.1 Die aktebesorger wie die opstelklousule op 'n transportvolmag geteken het, het die volmag onderteken as die enigste getuie. Is dit in orde? Bespreek kortliks. (1)
- 1.2 Die aktebesorger wie aangestel is in die volmag om voor die Registrateur van Aktes te verskyn het die volmag onderteken as die enigste getuie. Is dit in orde? Bespreek kortliks. (1)
- 1.3 Is dit nodig dat beide die man en vrou, getroud binne gemeenskap van goedere, 'n volmag vir die oordrag van hul eiendom teken? Motiveer u antwoord. (1)
- 1.4 Mag 'n volmag gegee deur beide gades, wie binne gemeenskap van goedere getroud is, geattesteer word deur 'n Kommissaris van Ede? Motiveer u antwoord. (2)

VRAAG 2 [5]

- 2.1 Hoe word persoonlike serwitute geskep? (2)
- 2.2 Kan 'n persoonlike serwituut verby die leeftyd van die persoon ten gunste waarvan dit geskep is strek? Verduidelik kortliks. (1)
- 2.3 Rick Jonas, getroud buite gemeenskap van goedere met Pree Jonas, sterf op 30 April 2018. In terme van sy testament word die eiendom bemaak aan sy suster Tracy Campbell, getroud binne gemeenskap van goedere met James Campbell. Klousule 4 van die testament lees as volg: "Met my dood sal my gade Spree Jonas geregtig wees om die eiendom te bewoon vir die res van haar lewe sonder betaling van enige huur." Stel die voorwaarde op wat betrekking het op Klousule 4 van die testament soos dit sal verskyn in die transportakte. (2)

QUESTION 1 [5]

- 1.1 The conveyancer who signed the preparing note on a power of attorney to pass transfer, has signed the power of attorney as the only witness. Is this in order? Discuss briefly. (1)
- 1.2 The conveyancer appointed in the power of attorney to appear before the Registrar of Deeds, has signed the power of attorney as the only witness. Is this in order? Discuss briefly. (1)
- 1.3 Is it necessary that both the husband and wife, married in community of property, sign a power of attorney for the transfer of their property? Motivate your answer. (1)
- 1.4 May a power of attorney given by both spouses, who are married in community of property, be attested by a Commissioner of Oaths? Motivate your answer. (2)

QUESTION 2 [5]

- 2.1 How are personal servitudes created. (2)
- 2.2 Can a personal servitude extend beyond the lifetime of the person in whose favour it is created? Explain briefly. (1)
- 2.3 Rick Jonas, married out of community of property to Pree Jonas, died on the 30th April 2018. In terms of his Will, the property was left to his sister Tracy Campbell, married in community of property to James Campbell. Clause 4 of the Will reads as follows: "Upon my death, my spouse Pree Jonas shall be entitled to occupy the property, free of rental, for the rest of her lifetime." Draw the condition which relates to Clause 4 of the will as it will appear in the Deed of Transfer. (2)

VRAAG 3 [5]

Watter dokumente moet by die Registrateur van Aktes ingedien word en deur wie moet hierdie dokumente onderteken word om die kansellasie te verkry van:

- 3.1 'n Notariële verband? (1)
- 3.2 'n Grondserwituut wat nie deur 'n notariële akte van serwituut geskep was nie en waar beide eiendomme verbind is onder aparte verbande? (3)
- 3.3 'n Serwituut reg van weg ten gunste van die algemene publiek? (1)

VRAAG 4 [5]

- 4.1 Kan 'n eiendom verkoop word deur 'n voornemende eienaar voordat dit in die persoon se naam geregistreer is? Motiveer u antwoord. (2)
- 4.2 Beskryf in u eie woorde wat u verstaan met die woord "titelakte" met die gebruik van voorbeelde. (1)
- 4.3 Verduidelik kortliks die verskil tussen 'n transportakte en 'n sertifikaat van titel. (1)
- 4.4 Verduidelik kortliks die verskil tussen die terme "attesteer" en "uitvoer". (1)

VRAAG 5 [10]

- 5.1 Beskryf die transportgewer, getroud buite gemeenskap van goed, wat ook geestesongesteld is, in die volmag en die konsepkte. (2)
- 5.2 Hoe word die Regspersoon van 'n Deeltitel Skema beskryf in die volmag en die konsepkte? (2)
- 5.3 Hoe word 'n minderjarige beskryf, wat verklaar is as 'n meerderjarige, in die volmag om transport te gee. (1)

QUESTION 3 [5]

Which documents must be lodged with a Registrar of Deeds, and by whom must these documents be signed, in order to obtain the cancellation of:

- 3.1 A notarial bond? (1)
- 3.2 A praedial servitude which was not created by a notarial deed of servitude and where both properties are mortgaged under separate bonds? (3)
- 3.3 A servitude of right of way in favour of the general public? (1)

QUESTION 4 [5]

- 4.1 Can property be sold by prospective owners i.e. before the transfer is registered in the person's name? Motivate your answer. (2)
- 4.2 Describe in your own words what you understand by the word title deed using examples? (1)
- 4.3 Explain briefly the difference between a deed of transfer and a certificate of title. (1)
- 4.4 Explain briefly the difference between the term "attest" and "execute". (1)

QUESTION 5 [10]

- 5.1 How would you describe a transferor, married out of community of property, who is a mental patient, in the power of attorney and the draft deed of transfer? (2)
- 5.2 How would you describe the Body Corporate of a sectional title scheme in the power of attorney and in the draft deed of transfer? (2)
- 5.3 How would you describe a minor who has been declared a major in the power of attorney to transfer? (1)

5.4 A en B is getroud binne gemeenskap van goedere met mekaar. In hulle gesamentlike testament het hulle boedels saamgesmelt en is die boedel bemaak aan hulle vier ongetroude kinders onderworpe aan 'n vruggebruik ten gunste van die langsliewende van hulle. Die langsliewende eggenote het gerepudieër.

5.4 A and B were married in community of property. In their joint Will they massed their estates and bequeathed their massed estate to their four unmarried children subject to a usufruct in favour of the surviving spouse. The surviving spouse repudiated.

5.4.1 Wie is geregtig op die Testateur se onroerende eiendom en wat sal die transportnemers se aandeelhouing wees? (4)

5.4.1 Who is entitled to the testator's immovable property and what will the transferees shareholding be? (4)

5.4.2 Verduidelik hoe u sal handel met die vruggebruik. (1)

5.4.2 Discuss how you will deal with the usufruct. (1)

VRAAG 6 [10]

QUESTION 6 [10]

Stel slegs die causa van 'n transportakte op in die volgende gevalle. (Begin u antwoord met "En die Komparant het verklaar dat ...")

Draw only the causa of a deed of transfer in the following cases. (Commence your answer with "And the Appearer declared that....")

6.1 Die eiendom is geregistreer in die naam van 'n fiduciarius wat gesterf het en wat oorleef word deur die enigste fideicommissarius. (5)

6.1 The property is registered in the name of a fiduciary who has died and who is survived by the only fideicommissary. (5)

6.2 Die eiendom is deur die ouers geskenk aan hul seun
 - onderhewig aan 'n vruggebruik ten gunste van beide ouers wie binne gemeenskap van goedere getroud is met mekaar;
 - onderhewig aan die uitsluiting van gemeenskap van goedere wat moontlik bestaan of wat moontlik hierna mag bestaan tussen die seun en sy voor-genome eggenote. Die seun is tans ongetroud. (5)

6.2 The property has been donated by the parents to their son
 - subject to a usufruct in favour of both the parents who are married in community of property to each other;
 - subject to the exclusion of community of property which may exist or hereinafter exist between the son and his intended spouse. The son is presently unmarried. (5)

VRAAG 7 [10]

QUESTION 7 [10]

'n Plaaslike owerheid wil 'n pad verbreed wat grens aan 'n deeltitel kompleks. Dit behels die oordrag van 'n strook van die gemeenskaplike eiendom aan die plaaslike owerheid. Verduidelik die prosedure.

A City Council wishes to widen a road bordering on a sectional title complex. This involves transferring to the council a strip of common property. Explain the procedure.

VRAAG 8 [15]

Beantwoord die volgende vrae ten opsigte van die Deeltitel Wet, Nr.95 van 1986 en motiveer u antwoord:

- 8.1 Kan 'n deeltitelregister geopen word en 'n reg van uitbreiding voorbehou word oor meer as een stuk grond wat nie gekonsolideer is nie? (2)
- 8.2 Maak die wet voorsiening aan 'n regspersoon om aansoek te doen vir 'n sertifikaat van geregistreerde titel vir 'n bepaalde gedeelte van die gesamentlike eiendom? (1)
- 8.3 Kan 'n ontwikkelaar huurkontrakte verleen oor uitsluitlike gebruiksgebiede? (2)
- 8.4 'n Deelplan van uitbreiding wat geregistreer moet word in terme van artikel 25 van die Deeltitel Wet, Nr.95/1986 verwys na 'n serwituut van oorskreiding op die naasliggende eiendom. 'n Verband is geregistreer oor hierdie buur-eiendom. Wie moet die notariële akte teken wat nodig is om die serwituut te registreer en wie moet toestem daartoe? Motiveer u antwoord. (3)
- 8.5 'n Eienaar van 'n deeltitel eenheid doen aansoek om die uitbreiding van sy eenheid. Die vereiste toestemming is verkry en die deelplan van uitbreiding van die eenheid is goedgekeur deur die Landmeter Generaal. 'n Deelverband is geregistreer oor die eenheid. Die eienaar doen nou aansoek by die Registrateur van Aktes vir die registrasie van die deelplan van uitbreiding ten opsigte van sy eenheid. Lys die dokumente wat hierdie aansoek moet vergesel. (7)

VRAAG 9 [5]

U ontvang opdrag vanaf Dodgy Bank om 'n verband te registreer vir sekuriteit vir die betaling van uitstaande skulde, wat nie voorheen verseker was nie. Die skuldoorsaak het ontstaan vyf

QUESTION 8 [15]

Answer the following questions in respect of the Sectional Titles Act No. 95 of 1986 and motivate your answer:

- 8.1 Can a sectional title register be opened and a right of extension be reserved over more than one piece of land that has not been consolidated? (2)
- 8.2 Does the Act permit a body corporate to apply for a certificate of registered title for a defined portion of the common property? (1)
- 8.3 Can a developer grant leases over exclusive use areas? (2)
- 8.4 A sectional title 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 the neighboring land. The neighboring land is subject to a registered mortgage bond. Who must sign the notarial deed required to register such a servitude and who must consent thereto? Motivate your answer. (3)
- 8.5 An owner of a sectional title scheme applies to extend his section. The required consent is obtained and the sectional plan of extension of the section has been approved by the Surveyor General. The section is subject to a sectional mortgage bond. The owner now applies to the Registrar of Deeds for the registration of the sectional plan of extension of the section. List the documents that must accompany the application. (7)

QUESTION 9 [5]

Dodgy Bank has instructed you to register a mortgage bond for the purpose of securing the payment of a debt not previously secured, which debt was incurred five months prior to the lodging

maande voordat u die verband ingedien het by die Aktekantoor vir registrasie. Die verband-gewer word gesekwestreer binne twee maande nadat u die verband ingedien het. Verleen dit aan Dodgy Bank 'n preferente eis? Bespreek.

VRAAG 10 [5]

10.1 Wat is die vereistes om twee eiendomme te kan konsolideer? (2)

10.2 Tydens die opmeting van 'n onderverdeling van 'n eiendom het die Landmeter opgetel dat die grootte van die eiendom 40 vierkante meter groter is as wat dit aangedui word op die reeds geregistreeerde kaart van die eiendom. Hoe sal u te werk gaan om die grootte reg te stel en watter dokumente moet ingedien word? Die eiendom is verbind onder 'n verband en onderworpe aan 'n huurkontrak? (3)

VRAAG 11 [25]

Bespreek die volgende en motiveer kortliks u antwoord

11.1 'n Skikkingsooreenkoms, wat 'n Hofbevel gemaak is, bevat die volgende bepaling:
"Immovable property shall be defined and distributed as follows: The plaintiff or her nominee shall be entitled to the property situated at Erf 7689 Saulsville."
Is 'n direkte oordrag aan 'n derde party (nominee/genomineerde) toelaatbaar? (2)

11.2 'n Beslaglegging is aangeteken teen 'n eiendom. Hoe word sodanige beslaglegging hanteer by 'n onteieningsoordrag van die eiendom? (2)

11.3 Dieselfde oordraggewer en dieselfde oordragnemer het twee koopooeenkomste gesluit met verskillende kooppryse ten opsigte van elk van die eiendomme. Mag

of such bond by you with the Registrar of Deeds for registration. The mortgagor is then sequestrated within two months from date of lodgment of the said mortgage bond. Will the Bank have a preferent claim? Discuss.

QUESTION 10 [5]

10.1 What are the requirements that need to be met before two properties can be consolidated? (2)

10.2 In the course of a survey for the subdivision of a property a Surveyor determines that the extent of the property is in effect 40 square metres more than appears on the current registered diagram of the property. How would you amend the extent to rectify the above as required and what documents will have to be lodged in connection therewith, assuming that the property is both mortgaged and subject to a lease? (3)

QUESTION 11 [25]

Discuss the following briefly and motivate your answer

11.1 A divorce settlement agreement, made an order of Court, has the following provision:
"Immovable property shall be defined and distributed as follows: The plaintiff or her nominee shall be entitled to the property situated at Erf 7689 Saulsville."
Is a direct transfer to a third party (nominee) permitted? (2)

11.2 An attachment is noted against a property. How will the attachment be dealt with when an expropriation transfer is done in respect of that property? (2)

11.3 The same transferor and the same transferee entered into two deeds of sale for two different properties with different purchase prices in respect of each property.

een transportakte aanvaar word ten opsigte van die twee transaksies?(2)	May one deed of transfer be accepted in respect of the two transactions? (2)
11.4 Die komparant en die oordraggewer/verkoper is dieselfde persoon. Hoe sal die beskrywing van die aanhef lees in die transportakte? (1)	11.4 The appearer and the transferor/seller in a deed of transfer is one and the same person. How should the pre-amble be cited? (1)
11.5 Mnr X is die geregistreerde eienaar van vyf eiendomme met vyf verskillende transportaktes. Al vyf die transportaktes en ook die aktekantoor registrasie afskrifte van die vyf transportaktes is verlore of vernietig. Hoe sal u die probleem oplos op die mees koste effektiewe manier? (2)	11.5 Mr X is the registered owner of five properties in terms of five different Deeds of Transfer. All five Deeds of Transfers have been lost or destroyed and the deeds registry copies have also been lost or destroyed. How will you rectify the problem in the most cost effective way? (2)
11.6 'n Ontwikkelaar is die alleen eienaar van 'n deeltitelskema en daar is geen regs-persoon ten opsigte van die skema nie. Die ontwikkelaar wil die gemeenskaplike eiendom onderverdeel en 'n sertifikaat van geregistreerde titel registreer ten opsigte van die onderverdeelde gedeelte. Op welke wyse kan die ontwikkelaar 'n titel bekom vir die onderverdeelde gedeelte wat hy wil behou? (2)	11.6 A developer is the sole owner of a sectional title scheme and no body corporate exists. The developer wants to subdivide the common property and register a certificate of registered title for that portion of the common property. How can the developer obtain a title for the portion of the common property where he/she wants to retain the subdivided portion? (2)
11.7 'n Regspersoon is die geregistreerde eienaar van 'n eenheid in 'n deeltitelskema. Die deeltitelskema word gesluit ingevolge artikel 49 van Wet 95 van 1986. In wiese naam moet die sertifikate van geregistreerde titel uitgereik word? (2)	11.7 A body corporate is the registered owner of a unit in a sectional title scheme. The scheme is closed in terms of section 49 of Act 95 of 1986. In whose name must the certificates of registered title be issued? (2)
11.8 'n Algemene Volmag is geregistreer deur twee partye waarin hulle 'n agent benoem om namens hulle op te tree. Een van die partye wil sy volmag beëindig. Wat moet gedoen word? (2)	11.8 A General Power of Attorney was registered in which two parties gave Power of Attorney to an agent. The one party wants to withdraw his Power of Attorney. What must be done? (2)
11.9 Mede-ontwikkelaars sluit 'n verdelings-ooreenkoms. Word 'n artikel 10 van Wet 95 van 1986 eedsverklaring benodig? (1)	11.9 Co-developers entered into a partition agreement. Will a section 10 of Act no. 95 of 1986 affidavit be required? (1)
11.10 Welke prosedure moet gevolg word wanneer 'n deel slegs gedeeltelik vernietig word? (2)	11.10 What procedure must be followed in case of a partial destruction of a section? (2)
11.11 Wat verteenwoordig/behels 'n geldige causa in 'n transportakte? (2)	11.11 What constitutes a valid causa in a Deed of Transfer? (2)

11.12 Mag dele in 'n deeltitelskema, wat nie aangrensend aan mekaar is nie, gekonsolideer word? (1)

11.12 May sections in a sectional title scheme that are not contiguous be consolidated with each other? (1)

11.13 Is 'n skenking of ruil van 'n gedeelte van landbougrond, wat aangegaan is voor die verkryging van die Minister se toestemming, geldig ingevolge die bepalings van die Wet op Onderverdeling van Landbougrond No. 70 van 1970. (1)

11.13 Is donation or exchange of a portion of agricultural land entered into prior to obtaining the Minister's consent valid in terms of the provisions of the Subdivision of Agricultural Land Act No. 70 of 1970? (1)

11.14 Twee eiendomme moet gekonsolideer word. Voor konsolidasie geld die volgende: komponent een is onderhewig aan 'n eerste en tweede verband. Die tweede verband oor komponent een, rangeer ook as eerste verband oor komponent twee. Wat is die vereistes met betrekking tot die verbande? (3)

11.14 Two properties must be consolidated. Prior to consolidation the position is as follows: component one is subject to a first ranking and a second ranking bond. The second bond over component one is also a first ranking bond over component two. What are the requirements relating to the bonds? (3)

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- DIE EINDE -

- THE END -