NOVEMBER 2013 EXAMINATION

DATE: 8 NOVEMBER 2013

TIME: 09H00 – 11H00

DURATION: 2 HOURS

TOTAL: 100 MARKS

PASS MARK: 40%

(YG-91)

PROPERTY LAW AND CONVEYANCING

THIS EXAMINATION PAPER CONSISTS OF 4 SECTIONS:

SECTION A: CONSISTS OF:
(i) 10 MULTIPLE-CHOICE QUESTIONS (20 MARKS)
(ii) 5 TRUE OR FALSE QUESTIONS (10 MARKS)
(iii) 5 SENTENCES FOR COMPLETION QUESTIONS (5 MARKS)

ANSWER ALL THE QUESTIONS

SECTION B: CONSISTS OF 9 QUESTIONS

ANSWER ALL THE QUESTIONS (30 MARKS)

SECTION C: CONSISTS OF 1 LONG ANSWER QUESTION

ANSWER THE QUESTION (15 MARKS)

SECTION D: CONSISTS OF 2 PRACTICAL APPLICATION QUESTIONS

ANSWER BOTH QUESTIONS (20 MARKS)

INSTRUCTIONS:

1. Read the following instructions carefully before answering the paper, as failure to act upon them will result in a loss of marks.
2. Write your answers in your answer book, which is provided in the exam.
3. Ensure that your name and student number are clearly indicated on your answer book.
4. Write your answers in either blue or black ink in your answer book.
5. Read each question very carefully before you answer it and number your answers exactly as the questions are numbered.
6. Begin with the question for which you think you will get the best marks.
7. Note the mark allocations for each question – give enough facts to earn the marks allocated. Don't waste time by giving more information than required.
8. You are welcome to use diagrams to illustrate your answers.
9. Please write neatly – we cannot mark illegible handwriting.
10. Any student caught cheating will have his or her examination paper and notes confiscated. The College will take disciplinary measures to protect the integrity of these examinations.
11. If there is something wrong with or missing from your exam paper or your answer book, please inform your invigilator immediately. If you do not inform your invigilator about a problem, the College will not be able to rectify it afterwards, and your marks cannot be adjusted to allow for the problem.
12. This paper may be removed from the examination hall after the examination has taken place.
(i) MULTIPLE-CHOICE QUESTIONS

Choose the correct option for each of the following. Write only the question number and your chosen answer. For instance, if you think that the correct answer for number 1 is (a), then write it as 1. (a).

1. Which of the following statements regarding the registration of deeds is/are correct?
   (a) Not all deeds registered in a deeds office are executed before the Registrar.
   (b) Some deeds are executed before a notary and registered at a deeds office.
   (c) A deed of transfer must be executed before the Registrar and registered at a deeds office.
   (d) All of the above.

2. Which of the following statements regarding latent and/or patent defects is correct?
   (a) A latent defect cannot be seen on a reasonably careful inspection of property.
   (b) A latent defect is clearly visible on a reasonably careful inspection of property.
   (c) When goods are sold 'voetstoots', the seller will be held liable for patent defects.
   (d) When goods are sold 'voetstoots', it means that there are no latent defects in the property.

3. When a conveyancer signs the preparation certificate on a deed of transfer it means that:
   (a) he or she accepts responsibility to register the deed after lodgement.
   (b) he or she has sold the property concerned.
   (c) he or she accepts responsibility for the correctness of information in the deed.
   (d) the deed is executed.

4. A power of attorney to pass transfer is drawn for signature by the:
   (a) conveyancer.
   (b) purchaser of the property.
   (c) seller of the property.
   (d) Registrar of deeds.
5. What document(s) must the mortgagee sign in order to cancel a mortgage bond?

(a) A power of attorney to cancel.
(b) A consent to cancellation.
(c) A cancellation deed.
(d) Both (a) and (b) above.

6. Which of the following statements is correct when the seller of immovable property is a VAT vendor?

(a) Transfer duty will be payable, and not VAT.
(b) VAT will be payable, and not transfer duty.
(c) Both VAT and transfer duty will be payable.
(d) The purchaser can choose whether to pay VAT or transfer duty.

7. When the purchaser of property is registering a mortgage bond over the property to obtain the necessary funds to purchase, the bond must be registered:

(a) before the deed of transfer is lodged for examination.
(b) simultaneously with the transfer of the property into the purchaser's name.
(c) within 6 months of the acquisition of the property.
(d) after the property is transferred into the purchaser's name.

8. In a deceased estate transfer, the section 42(1) certificate must be signed by the:

(a) conveyancer.
(b) Registrar of Deeds.
(c) Master of the High Court.
(d) executor.

9. Where an owner of a large property wants to mortgage a portion of the property separately from the remainder, he or she can do this by:

(a) subdivision of the property.
(b) registering a personal servitude.
(c) registering a praedial servitude.
(d) consolidation of the property.

10. The common property of a sectional title scheme:

(a) is always owned by the developer of the scheme.
(b) is owned by all owners of a section in the scheme.
(c) is part of a unit in a sectional title scheme.
(d) Both (b) and (c) above. [10 × 2 = 20]
(ii) **TRUE OR FALSE QUESTIONS**

Choose whether the following are True or False. If you decide that the statement is false, motivate your answer.

1. There is only one deeds office in South Africa and it is situated in Johannesburg.

2. In an agreement of sale, it is usual for the seller to undertake to pay the costs of transfer.

3. When dealing with a transfer of property in which the transferor is married according to the laws of a foreign country, both spouses should execute the power of attorney to pass transfer.

4. The purpose of a mortgage bond is to secure an obligation that the owner of the property mortgaged has toward the mortgagee.

5. An exclusive use area in a sectional title scheme is transferred to a purchaser by means of a deed of transfer. **[5 × 2 = 10]**

(iii) **SENTENCES FOR COMPLETION QUESTIONS**

Complete the following sentences by filling in the missing word or words. Write down only the letter of the statement and the missing word or words. For example 1. priest.

1. A diagram of land is prepared by a _____ _____. (1)

2. The numbering of deeds into a batch is called _____. (1)

3. When dealing with an intestate estate, an affidavit by the _____ must be lodged as proof that the deceased died intestate. (1)

4. When you are transferring property from a deceased estate to a purchaser, the _____'s consent must be endorsed on the power of attorney. (1)

5. A Sectional Mortgage Bond must be signed by the mortgagor in the presence of the ______. (1) **[5]**

[35]
QUESTION 1

Define or explain the following terms:

(a) a power of attorney to pass transfer (2)
(b) a real right (2) [4]

QUESTION 2

What will the consequence be, if a deed drawn by a conveyancer and lodged for examination, does not comply with the provisions of the Act and regulations? [2]

QUESTION 3

Why does the conveyancer obtain an insolvency affidavit from the parties to a transfer? [2]

QUESTION 4

List six documents to be lodged when lodging a conventional transfer for registration. [6]

QUESTION 5

List three close corporation documents that must be obtained when dealing with a close corporation. [3]

QUESTION 6

Explain what a Regulation 68(1) application is. [2]

QUESTION 7

List four documents to be lodged when applying for a certificate of consolidated title. [4]
QUESTION 8

Define the following sectional title terms:

(a) body corporate (2)
(b) a sectional title unit (2) [4]

QUESTION 9

Name two matters that are determined by the participation quota in a sectional title scheme. [3]
SECTION C: LONG ANSWER QUESTION (15 MARKS)

ANSWER THE QUESTION

QUESTION 1

Outline the correct sequence of steps to be taken by a conveyancer from the time that instructions are received to register a bond until the office file is closed.

[15]

[15]
**SECTION D: PRACTICAL APPLICATION QUESTIONS**

**ANSWER BOTH QUESTIONS**

**QUESTION 1**

Read the deed of sale below and answer questions (a) to (g) that follow.

<table>
<thead>
<tr>
<th>Page 1</th>
<th>Page 2</th>
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<tbody>
<tr>
<td><strong>DEED OF SALE</strong></td>
<td>5. <strong>SOLE RISK</strong></td>
</tr>
<tr>
<td>I the undersigned</td>
<td>It is agreed that the property shall be at the sole risk of the</td>
</tr>
<tr>
<td>Ben Ho, on behalf of the close corporation</td>
<td>purchaser from the date of possession.</td>
</tr>
<tr>
<td>Propdev cc, Registration Number 2003/2345/23</td>
<td>6. <strong>BREACH</strong></td>
</tr>
<tr>
<td>of Unit 4, Park Suite, The Mews, Ocean Street, Port Elizabeth</td>
<td>In the event of the purchaser failing to fulfil on due date any</td>
</tr>
<tr>
<td>(herein after called 'the Purchaser')</td>
<td>of the terms and conditions of this deed of sale, the seller or</td>
</tr>
<tr>
<td>Hereby offer to purchase from</td>
<td>his agent, shall have the right either to:</td>
</tr>
<tr>
<td>Mary Smith</td>
<td>(a) Cancel the sale by registered letter addressed to</td>
</tr>
<tr>
<td>Of 20 Main Road, Willowbridge Durban</td>
<td>the purchaser, in which event, the purchaser</td>
</tr>
<tr>
<td>(herein after called 'the Seller')</td>
<td>shall forfeit all monies paid to the seller or his agent, without prejudice to the</td>
</tr>
<tr>
<td>The following property, namely:</td>
<td>seller's other legal rights and remedies and the right to claim damages; or</td>
</tr>
<tr>
<td>20 Main Road, Willowbridge, Durban</td>
<td>(b) Claim immediate payment of the whole of the</td>
</tr>
<tr>
<td>(herein after called 'the Property')</td>
<td>purchase price and the fulfilment of all the terms</td>
</tr>
<tr>
<td>On the following terms and conditions:</td>
<td>and conditions hereof.</td>
</tr>
<tr>
<td>1. <strong>PURCHASE PRICE</strong></td>
<td>Signed by the seller at Willowbridge on this 1st day of March</td>
</tr>
<tr>
<td>The purchase price shall be finalised by agreement between the parties within 7 days of signature hereof.</td>
<td>2013.</td>
</tr>
<tr>
<td>2. <strong>MORTGAGE BOND</strong></td>
<td><strong>MsSmith</strong></td>
</tr>
<tr>
<td>This sale is conditional upon a first mortgage bond being granted for the purchase price by a recognised</td>
<td>Seller</td>
</tr>
<tr>
<td>bank or other financial institution within 14 days from date of signature hereof.</td>
<td></td>
</tr>
<tr>
<td>3. <strong>POSSESSION</strong></td>
<td></td>
</tr>
<tr>
<td>Possession of the property shall be given to the purchaser on</td>
<td></td>
</tr>
<tr>
<td>01 April 2013.</td>
<td></td>
</tr>
<tr>
<td>4. <strong>TRANSFER</strong></td>
<td></td>
</tr>
<tr>
<td>Transfer of the property shall be passed by the seller's conveyancer and shall be given and taken by the</td>
<td></td>
</tr>
<tr>
<td>purchaser on 30 April 2013.</td>
<td></td>
</tr>
<tr>
<td><strong>HCG</strong></td>
<td></td>
</tr>
</tbody>
</table>

(a) Does this agreement of sale identify all the required content to be valid? Support your answer. (2)

(b) Does this agreement of sale comply with all required formalities? Give a reason for your answer. (2)
Now assume that the agreement is valid and assume the property is being sold for a purchase price of R1 000 000.

(c) Propdev close corporation, the purchaser, wants to terminate the deed of sale. On the facts given, give one reason why the purchaser cannot apply the cooling-off provision in terms of Section 29 A of the Alienation of Land Act to terminate the sale. (1)

(d) If the bond referred to in the clause 2. is not granted, what is the legal status of the agreement? (1)

(e) If the bond referred to in the clause 2. is not granted and the purchaser had already paid a deposit on the purchase price to the seller, will this money be refunded to the purchaser? (1)

(f) The seller tells you that she does not want to be responsible for any damages that may occur to the property after the purchaser moves in. Identify which clause of the above agreement covers her in this situation (1)

(g) Clause 4 of the agreement specifies the date of transfer. Can the parties predict the exact date on which transfer of ownership will take place? (1) [9]

QUESTION 2

James King sold his house in Cape Town to Tobias and Sally Ndhlovu. Tobias and Sally have been granted a mortgage bond by XYZ Bank to finance the purchase.

James is unmarried. Tobias and Sally are married in community of property to each other.

(a) What is the causa for this transfer? (1)

(b) There is a sum of R10 000,00 in unpaid rates in respect of the property. How is this relevant to the registration of transfer? (2)

(c) Name four documents that the conveyancer will prepare for signature by the transferor. (4)

(d) Can Tobias sign the power of attorney to mortgage on his own? Give a reason for your answer. (2)

(e) Tobias already owns a property in Johannesburg. He wants to know whether, after the transfer has gone through, he can consolidate the two pieces of land into one erf under a certificate of consolidated title. Advise Tobias and give a reason for your answer. (2) [11]

[20]

Section A: 35 marks
Section B: 30 marks
Section C: 15 marks
Section D: 20 marks
TOTAL: 100 MARKS