

SELF ASSESSMENT ANSWERS UNITS 1 TO 5

UNIT 1

1.1 **Characteristics of a positive system** – see bulleted list under paragraph 2

Characteristics of a negative system – see bulleted list under paragraph 2

Positive characteristics of SA system

The state examines/investigates documentation and transaction for legality

The state completes and maintains a register of title

Register of title is linked to a cadastral system of maps and diagrams

Linking of transactions occur

The state in South Africa is under specific circumstances liable for shortcomings

The state register of property in South Africa is subject to a great deal of state supervision and intervention/interference

The public does rely on the accuracy of the deeds registry data, although no guarantee is given by the state

Negative characteristics of the South African system

The state gives no guarantees of accuracy of state register

Transfer is generally effected in a new deed of transfer for each transaction (see sec 16)

The state as a general rule does not incur liability for inaccurate or incomplete records, except in very specific limited circumstances

1.2 For some examples see paragraph immediately below activity relating to expropriation of property by state or marriages in community of property.

1.3 Suggested solutions has been included in answer to activity 1.1 above.

UNIT 2

2.1 Yes, attorneys practicing in the former Transkei before 1997 may fulfil all the functions of conveyancers, but as a general rule, no, attorneys cannot act as conveyancers.

2.2

Deeds that MUST be prepared by conveyancer	Deeds that may be prepared by an attorney, notary or conveyancer
Deed of transfer	Partition agreement
Partition transfer deed	Power of attorney
Cession of a mortgage bond	Consent to cancellation of a mortgage bond
Mortgage bond	Application for correction in terms of sec 4(1)(b)
Cession of a notarial bond	

2.3 The preparer i.e. attorney X, must initial the corrections in terms of regulation 44(2).

2.4

Linking

2	1
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No	Code	Names of parties - SIMULS	Firm no	No in batch	Title deeds
1	T	Ramwell/Bestfriend	69	1	T2345/2004

2	B	Bestfriend/African Bank	224	2	

2.5 Refer to paragraph 3.2.3 of unit 2 for persons who may prepare a deed for lodgement and refer to paragraph 3.2.5 just above the self assessment exercise for persons who may lodge deeds at the deeds registry.

Unit 3

3.1 Section 2 of the Deeds Registries Act requires that the appointee

- have a Diploma Juris or equivalent degree/diploma
- proven expertise or
- the capacity to acquire the ability to perform the functions of a registrar of deeds within a reasonable time

3.2 You can make your own summaries of paragraphs 3 and 4 of unit 3

3.3 In each of the cases, apart from the judgments protecting the mortgagee's rights, if the court had to decide on the liability or not of the state and the deeds employees, the court would have to assess taking into consideration the facts of each individual case, whether in terms of s 99:

- the registry employees acted or omitted to act with *mala fide* or
- whether the registrars or officials failed to exercise reasonable care and diligence in carrying out their duties.

If the court finds this to be the case, then there will be state liability, if not, then no state liability.

UNIT 4

4.1 Yes, the definition of owner in section 102 makes it clear that if the property forms part of the joint estate, and is registered in the name of X, who is married in community of property to Y, then "either spouse or both spouses" can sign the transfer documents as owner. Keep in mind that

where only one of the spouses signs, the written, witnessed consent of the other spouse will be required.

4.2 A natural person is identified in terms of reg 18 by name and identity number, or

If ID document is incorrect, by name, ID and date of birth, or

If no ID, then by name and date of birth, or

If no ID and date of birth unknown, by a method approved by registrar

AND by marital status (except for persons merely representing someone else eg executor)

- Refer to example 7 of “Deed of Transfer: descriptions of natural persons” table : Suzy Smith Identity number xxxxxx, married in community of property to John Brown, with community of property is excluded by a condition contained in the will of the late Sam Smith in respect of the land hereinafter described
- Refer to example 3 of “Deed of transfer: descriptions in the case of persons acting in a representative capacity” table: Sophia Mtwetwe, Identity number 650409 0023 056, Unmarried (a mental patient)
- John Peters Identity number zzzz married in community of property to Jane Peter and

Jim Jones Identity number xxxx married in community of property to Anne Jones

Trading in partnership under the name of Jo-Ji Jewellers

4.3 Refer to paragraphs 2. 3.6. The property description must include:

- a full description of the land (registered number, portion or remaining extent, or share if applicable)
- the situation of the land (registration division, administrative district, township if applicable, and province)
- the extent or area of the land (in word and figures)
- different pieces of land in different paragraphs, and different portions of the land in separate paragraphs

4.4

- First registered by deed of transfer T93/1957 with diagram SG number 652/55 annexed thereto, and held by deed of transfer T7629/1986

- First registered by certificate of registered title T184/1970 and held by deed of transfer T7629/1986
- First transferred * and still held by deed of transfer T7629/1986 with diagram number SG 378/1985 annexed thereto.

(*if the first registration were a certificate of title and not a transfer, it would read “First registered...”)

4.5 See labelled example of form E at the beginning of the unit.

UNIT 5

5.1 Power of attorney to transfer immovable property sold by curator of an insane person - what supporting evidence should preparer require?

- proof of appointment by the Master, preparer should view original and keep certified copy on file
- proof of compliance with sec 80 i.e. consent to sale from Master for value less than R100 000, or Court consent for value above R100 000

Note: preparer should use the above documentation to ensure that this sale is within curator’s powers as granted by will or the Master’s appointment (unless there is an overriding court order authorising the transfer) - and that the sale was entered into after curator’s appointment was granted by the Master.

5.2 Why special rules and procedures for partnerships?

A partnership is not recognised in law as a legal person, but from a conveyancing perspective, the existence of the partnership cannot be simply ignored and the property registered in the individual names of the partners as though no partnership exists. So regulation 34 and section 24 of the Deeds Registries Act 47 of 1937, is an attempt to effectively deal with the partnership situation without compromising the legal reality i.e. the partnership is not a separate legal person.

5.3 Vesting clause for fideicommissary bequest to X married in cop to Y. This self assessment was tricky, perhaps too tricky. The transferees would simply be described as usual X, identity number 2222 and Y, identity number 333, married in community of property. The fideicommissary restriction would be included in the conditions clause of the deed of transfer.

5.4

- Sonja Spies Identity number 840306 0032 081 unmarried – no special consents
- Sonja Spies Identity number 980318 0032 008, unmarried minor, duly assisted herein by Maria Spies and Joseph Spies, her mother and father as natural guardians. (Note: may require consent of Master of High Court or High Court depending of value)
- Siphon Nzo Identity number 58910 5032 008 married out of community of property Unrehabilitated insolvent acting with written consent of the trustee in my insolvent estate (or John Smith, in my capacity as liquidator in the insolvent estate of Siphon Nzo Identity number 58910 5032 008 married out of community of property, duly authorised by letter of appointment zzz/2013 issued to me by the Master of the High Court Gauteng South on 14 April 2013)
- Refer to paragraphs 2.2.2.9 (usufructs) and 2.2.2.10 (fidei commissums). Sec 69 deals with the transfer and mortgage of land subject to a personal servitude, while sec 69 bis (1) deals with transfer of land subject to a fideicommissum. As you will see from the wording of the sections, the procedure is very similar.

5.5

False, refer to paragraph 2.3.1. Every page must be initialled by the grantor and witnesses, except those signed in full.

- True and false. Each power of attorney should have two witnesses older than 14 years, but court cases held this to be directory and registrar has a discretion. Also, a single magistrate, justice of the peace, commissioner of oaths or notary public may witness the power of attorney.
- True, if accompanied by a translation certified by a sworn (or other) translator.

5.6

Recent SARS and Deeds office policy is that either a transfer duty receipt or exemption must be lodged with all transfers or immovable property, irrespective of whether it is an estate transfer or vatable transaction. With massing technically there should be a transfer duty receipt for the surviving spouses half share and a transfer duty exemption for the deceased's half share of the property being transferred to the heir.

- Since the property is being transferred as inheritance, the transfer is exempt from transfer duty in terms of section 9. However the SARS policy has changed in this regard, so contrary to RCR14/2000, at transfer duty exemption will have to be lodged.

SELF ASSESSMENT ANSWERS UNITS 6 TO 11

UNIT 6

6.1 The executor of the deceased estate, or the executor's duly authorised representative, or "any representative of a deceased owner recognised by law") must pass transfer on behalf of the estate. Refer to paragraph 2 of unit 6 for the extended meaning of executor to include "assumed" executors.

Where the land however forms part of a joint estate (due to marriage or civil partnership in community of property), the surviving spouse/partner must be joined with the executor to pass transfer from the joint estate, unless one of the exceptions below apply.

- The surviving spouse/partner need not be joined where:
 - the executor is only dealing with the deceased half share
 - the land has been sold to pay the estate debts
 - there has been massing and the surviving spouse/partner has already adiated
 - transfer is in favour of the surviving spouse/partner or
 - the surviving spouse/partner is already signing the power of attorney to transfer as executor.
- "that Dalita Ramwell appeared before me, the registrar of deeds at Johannesburg, she the said Appearer being duly authorised thereto by a power of attorney dated the 24th day of April 2013, signed at Johannesburg and granted to her by the executor in the estate of the late Ben Botes No 2345/2013 and by Susan Botes, identity number 222222, widow and the surviving spouse in her personal capacity, by virtue of the marriage in community of property to the said Ben Botes. (Refer to table item 4 of vesting clauses in unit 4.)
- Mary Masela
Identity number 123409459
Widow (or unmarried)
(Note: this was tricky – had they been married in community of property section 21 would have applied and the executor of Joe's estate could alone have transferred the property from the joint estate, since Mary has adiated. However, being married out of community of property, Mary is the owner and must transfer.)
- The executor in the estate of the late Ben Botes
(Note: Surviving spouse need not co- sign transfer documents since executor is only dealing with deceased's half share which is being transferred to the surviving spouse. In the recital /causa there will be an explanation of the marriage in COP etc, and Susan Botes will be described fully in the transferee vesting clause. Later when you have completed unit 7 you will see that in fact there would not have been a deed of transfer for this transaction – this transfer should be done by a simple endorsement of the existing title deed.)

6.2 **Recitals** :Refer to paragraphs 2.3.1 to 2.3.5 of unit 6.

- Whereas the late Ben Botes, who was married in community of property to Susan Botes, died on 13 April 2007, and *during his lifetime on 10 April 2007 sold the within mentioned property to the transferee herein, Jan Lowe, from the joint estate
NOW THEREFORE..
* For this exercise you could have given any number of reasons why Jan Lowe was entitled to the property – maybe he was the deceased's testate heir, or maybe he bought the property from the estate. It does not matter, the point is that you must give some credible reason for the transfer. In practice you would of course have evidence for and provide the real causa, not make one up!
- Whereas Mary Masela was married out of community of property to the late Joe Masela who died on 13 April 2103, and it terms of their mutual will their separate estates were massed and the undermentioned property bequeathed to Arnold XYZ, the undermentioned transferee, subject to a lifelong usufruct in favour of Mary Masela as set out in the conditions of title hereunder, NOW THEREFORE ...
- Whereas the late Ben Botes, who died on 13 April 2007 was married in community of property to Susan Botes, the undermentioned transferee, and in terms of their joint will, the survivor of them is the sole heir of the herein mentioned property from the joint estate, subject to the conditions of the will, set out below in the conditions clause, NOW THEREFORE...

6.3 Summarise paragraph 3.1.5 of unit 6 in your own words.

6.4 No, because by definition, a partition transfer requires that each co-owner receive a specific piece of land in lieu of his prior undivided share. If one were to receive only money and no land it would amount to a sale of land, not a partition. See section 26(2)(c) of the DRA 47/1937.

- Refer to section 26 and paragraph 3.3.1.3 unit 6 of your study guide.
- The bondholder of B55/1980 must consent (section 27 of DRA) either to the disposal/cancellation of the bond or to the partition of Erf 10 Tembisa and the substitution of Portion 1 of erf 10 Tembisa as security under the bond

The consent of the fideicommissary heirs (and perhaps that of Master of the High Court or High court itself if fideicommissary heir is a minor) – see section 30 of DRA

(The above are the obvious consents, required, but the following are also possibilities:

- if either Sam or Jonas are minors, then the Master or High Court may have to consent in terms of section 80 of the Administration of Estates Act 66 of 1965
- since this a municipal land the local authority would have to consent to the subdivision/partitioning
- if servitudes need to be created/amended this will have to be done notarially and if there are existing real right holders (lease or persona servitude holders) their consent will be required (see sec 28 of DRA).
- For mineral rights, refer to paragraph 3.3.1.3.1 – reference to mineral rights must be omitted and ignored.
- Sam's erstwhile ($\frac{1}{4} + \frac{1}{4}$) = half share of Erf 10 Tembisa
- The entire remaining extent, which is substituted for Jonas's half share.

6.5 The owner of the land (on whom the expropriation notice must be served) is the registered owner, or the executor of his/her deceased estate, or the trustee of his/her insolvent estate or the deputy sheriff who may have attached the property. (This question was ambiguous –sorry.)

- X can try to negotiate with Transnet for a higher compensation, refer the matter to the ombudsman and if this fails, take the matter to court.

- Transnet becomes the legal owner of the demarcated property on the date specified in the notice of expropriation.
- Transnet, the expropriating authority will not be able to deal with the expropriated land until it has formally taken transfer in the deeds registry (sec 31(5)).
- Refer to paragraph 4.5. Since only a portion of X's land is being expropriated, she can transfer the land, but subject to an expropriation condition being inserted in the deed of transfer.

6.6 No, acquired state land may be transferred either by a deed of transfer or a deed of grant (sec 18(2)).

- Unalienated state land is land that has never been formally registered in the deeds registry and by default belongs to the state. Accordingly, there are no title deeds for the unalienated state land until such time as they are transferred by the state, by way of a deed of grant, to a new transferee.
- Yes, personal rights may be registered and included in a deed of grant – sec 63(2).

UNIT 7

7.1 The state, or a local authority or transitional local authority must acquire ALL the land under one title deed

From another local authority

By provision of law – not a sale but may be expropriation

7.2 Refer to paragraph 5 of unit 7 but also paragraph 2.2.12 of unit 5, and particularly the first bulleted exception discussed there. In other words, yes B will be able to deal freely with the property acquired by him after sequestration, adverse to the insolvency trustee.

A person may deal freely with any property acquired after rehabilitation because such property never vested in his insolvency trustee and therefore need not be retransferred to the insolvent by way of a sec 58(2) endorsement.

7.3 Summarise and discuss the transfer by endorsement procedure as per sec 45 of the DRA.

7.4 Summarise and discuss the transfer by endorsement in terms of sec 45bis(1)(a) of the DRA, paragraph 7.1 of unit 7.

Even if the court ordered a forfeiture of rights, both spouses still need to sign the application to transfer the property by endorsement to the other spouse. Refer to paragraph 7.3.

Both erstwhile spouses will have to apply for the transfer by endorsement to reflect each spouse as owner of an undivided half share, and thereafter Y can sell and transfer her half share of the property to Z in the usual way, by deed of transfer form E.

UNIT 8

8.1 Your explanation should basically contain the information from the first paragraph under paragraph 2 - A certificate of title is a deed, prepared by a conveyancer in the prescribed form, ..

8.2 Municipal clearances are required for any transfer of land, but where a certificate of title is issued, there is no transfer of land, only a documentary confirmation of a pre-existing legal situation.

8.3 Section 34 certificate of title in replacement of a lost or destroyed deed can only be used where there are:

- joint owners who hold undivided shares in property

- under one deed and
- only if the existing lost deed is not exhausted thereby.

If it can be used, then it is preferable because the individual joint owner can apply alone for his certificate of title for undivided share.

In all other cases the regulation 68 procedure must be used to obtain a certified copy of the lost title deed, which then invalidates the original deed.

8.4 a) Fanie and Aletta will have to apply for a transfer by endorsement in terms of sec 45bis (1A) from the joint estate to vest in undivided half shares in their individual names under the same, original title deed. (Transfer by endorsement remember?) Then, in terms of sec 34 (1) Fanie MUST obtain a separate title for his undivided half share before he can encumber it by a mortgage bond i.e. a certificate of registered title.

b) Summarise the contents of paragraphs 2, as applicable and paragraph 3.3 which deals with the supporting documents of this particular sec 34 (1) application.

2. Assuming that X owns the entire township under one title deed, he will have to apply in terms of sec 43 for a certificate of registered title for erf 10 before he can mortgage erf 10 Ermelo.

3. Refer to paragraph 10.1.3 for general procedure and paragraph 10.3 for supporting documents.

4. Z must apply for a certificate of registered title in terms of sec 36 – refer to paragraph 6.

8.5 The difference is explained in the self assessment box, at the bottom.

8.6 Summarise paragraph 11.1 up to and including 11.2.7.

8.7

1. The existing bond must either be cancelled (which necessarily means the debt that it secures must be paid), alternatively X may apply that all the consolidated land (erf 3 and 8) be substituted for the land (erf 3) that was originally mortgaged, provided the bondholder consents to this.

2. Refer to the second example on page 173. One bond will have to be cancelled and the remaining bond extended to secure both consolidated properties as above.

3. see paragraph 11.4.4

8.8 Summarise paragraph 12.3.3 in your own words.

UNIT 9

9.1 Your explanation should be extracted from paragraph 2 and should include that it is a form of security for debt, binding immovable property, by way of registration of a deed in the deeds registry.

9.2 No, such a bond is not registerable – see paragraph 2.2.5

9.3

1. Sorry typing error – it should read "... end of paragraph 2.2.6 above?" This was a simple money owning transaction so, Non numeratae pecuniae, revision of accounts, errore calculi and no value received. No sureties or co-mortgagors, so last three exceptions don't apply.

2. Non causa debiti, revision of accounts, errore calculi and no value received

Non numeratae pecuniae, revision of accounts, errore calculi and no value received. No sureties or co-mortgagors, so last three exceptions don't apply.

9.4 see paragraph 2.2.13 and choose two examples from there to discuss.

9.5

1. See the first example on page 201. They are very similar but in the one instance the indemnity bond will be a first bond over the principal debtors property in favour of the surety, while in the other the indemnity bond by the principal debtor in favour of the surety will rank as a second bond, after the principal creditors bond over the same property.
2. Summarise paragraph 11 in your own words
3. There must already been a existing bond securing the debt between the mortgor and mortgagee.
4. The causae would be an explanation as to why there is a legal obligation on the mortgagor to pay the mortgagee a certain sum of money, either once off or in regular instalments for a specified or unspecified time period.
5. It has the same effect as an attachment of the property
6. * kustingsbrief bond
* Indemnity bond between Z and Y and an ordinary mortgage bond between X and Y.

UNIT 10

10.1 The five circumstances are listed and bulleted on page 209. The reasons you surmise may be different but I think from a practical perspective these are all forced sales and transfers and the owners are unlikely to co-operate to facilitate the transfer by freely handing over the title deeds, so transfer would be stalled and almost impossible to effect, hence this provision.

10.2

1. Refer to paragraph 3.3.1
2. If all the property and the person secured under a mortgage bond are released, the bond is “empty” and deemed to be cancelled.
3. I think the wording of this question is in retrospect, unfortunate. I do not require the detailed “procedure”, but rather an explanation of whether it can be done and how. Yes it can, by applying for release of the one property and mortgagor from the bondholder, with the consent of the co-mortgagor, provided the other mortgagor and other property remains secured by the bond.
4. This was a bit of a trick question to see if you are integrating the knowledge you have acquired. Although sec 56 provides that where transfer is effected by the trustee of an insolvent estate, the mortgage bond need not be disposed of, we are not just dealing with an insolvency sale here. Refer back to transfers by endorsement in terms of sec 24, where one of the partners in a partnership becomes insolvent, the partnership is dissolved and the property must be transferred by endorsement to the individual partners in undivided shares. Thereafter the insolvent ex-partners share maybe transferred by the trustee in his insolvent estate to who ever, and yes, then the bond need not be lodged for disposal.

10.3

1. Refer to paragraph 4.5
2. Refer to paragraphs 4.2 and 4.3
3. Refer to paragraph 4.3
4. Refer to paragraph 4.4.5
5. Refer to paragraph 4.2

10.4

1. refer to paragraph 5.5.2.1 to 5.5.26
2. Refer to paragraphs 5.1, 5.2 and 5.3 and summarise in your own words
3. See the first example on page 222
4. No, because X, is reserving a real right in favour of herself – refer to paragraph 5.5.2.3
5. See paragraph 5 page 220

6. See first example on page 223 – the bond may be endorsed in terms of sec 45bis (2)(b) if the spouses jointly and severally accept responsibility in writing for the whole debt and renounce the relevant exceptions .

7. Typo again! Please differentiate between 45(2) and 45bis(2)(a) – Both deal with acquisition of the erstwhile joint estate property by ONE of the spouses from a marriage in COP and the simultaneous endorsement of the bonds over the property, but sec 45 applies on death of one spouse while sec 45bis(2)(a) applies on divorce.

10.5 Since only the mortgagee's rights to security are limited by the registration of a part payment, the mortgagors' consents are not required.

A covering bond provides security for a fluctuating debt, and by agreement, this cover or security can be reduced. An ordinary bond (not a covering bond) provides security for repayment of a specific debt, and when that debt is reduced a part payment is registered.

10.6 Waivers of preference against bonds registered or about to be registered, changing the default date of registration order of preference for payment where debtor is unable to meet debts

Waivers of preference against registered limited real rights (usufruct, habitation, usus) – where NOTARIALY waived in favour of a bond, it means that should the landowner debtor default on mortgage bond payments, the bondholder can foreclose and sell the property in execution, notwithstanding the registered real rights. Property is then transferred to purchaser free of the limited real right and in effect the limited real right holder, by signing such a waiver for the debtor, is standing suretyship for the debtor.

Waivers of preference against registered personal rights eg pre-emption, reversion and fideicommissum – same as above

2. Cessions as security are of a temporary nature and the original bondholder retains an interest as does the cessionary, so both Y and Z should sign the waiver.

3. No, only if one of the bonds is already registered.

10.7 Refer to section 3(1)(s) – also bulleted list at the top of page 235.

UNIT 11

See paragraph 3.1.2.2 and sec 92(2) – although registrar won't insist on transfer to Y being registered, transfer duty on that transaction must be paid before any further registrations of that property will be permitted.

2a) Transfer of entire property from estate direct to Y. Refer to exception in section 14(1)(b)(iii).
b) Y, Q and the executor of X's estate.

c) Refer to p 240 - since redistribution agreement impacts on the estate liquidation and distribution account, the transfer by redistribution must reflect in the L&D account. A redistribution after the L&D account has been accepted by the Master, will not fit in under this exception.

3. Exceptions to sec 14 rule in section 14 itself, exceptions contained elsewhere in the Deeds Registries Act , where the court directs, and exceptions contained in other legislation.

4. No, refer to sec 14(1)(b) (i) discussed in par 3.1.1.1

11.2 section 4(1)(b) reads – try to summarise this in your own words:

whenever it is in his opinion necessary or desirable to rectify in any deed or other document, registered or filed in his registry, an error in the name or the description of any person or property

mentioned therein, or in the conditions affecting any such property to rectify the error: Provided that-

- (i) every person appearing from the deed or other document to be interested in the rectification has consented thereto in writing;
- (ii) if any such person refuse to consent thereto the rectification may be made on the authority of an order of Court;
- (iii) if the error is common to two or more deeds or other documents, including any register in his registry, the error shall be rectified in all those deeds or other documents;
- (iv) no such rectification shall be made if it would have the effect of transferring any right;

Also keep in mind that the error must have been made at the time of registration of the deed. This section cannot be used to amend deeds where the circumstances have simply changed subsequent to the registration.

2. Yes, provided all relevant persons consent and all deeds with that error are lodged for correction, since the error was made at registration and will not have the effect of transferring a right.
3. This cannot be rectified by way of sec 4(1)(b) since it will result in the transfer of a right in land.

11.3 Briefly summarise par 5.2

11.4 summarise par 5.3

11.5 The personal servitude will have to be cancelled by way of a bi-lateral notarially executed agreement. Both the title deed, the original notarial deed K3/1990 S and the new notarial agreement cancelling the servitude will have to be lodged as well as a transfer duty receipt/exemption. (This is a transfer of a right in property after all.)

11.6

1. Refer to paragraph 6.1 dealing with section 39(2) of the Administration of Estates Act
2. Refer to paragraph 6.2 dealing with section 39(3) of the Administration of Estates Act
3. No, see paragraph 6.3.1 – for a sec 40 endorsement, the beneficiaries must be named and the trust must make provision for the termination of the trust.

The last self assessment activity, relating to the monster case study has been answered in detail in pages 266 to 271.