

Course Code: L603/L501 (M) 2005

**UNIVERSITY OF SWAZILAND**  
**FACULTY OF SOCIAL SCIENCE**  
**DEPARTMENT OF LAW**  
**FINAL EXAMINATION PAPER, MAY 2005**

**TITLE OF PAPER** : **CONVEYANCING AND NOTARIAL PRACTICE**

**COURSE CODE** : **L603/L501**

**TIME ALLOWED** : **THREE (3) HOURS**

**INSTRUCTIONS** : **ANSWER QUESTION ONE AND ANY OTHER  
FOUR OTHER QUESTIONS.**

**DO NOT OPEN THIS PAPER UNTIL PERMISSION HAS BEEN GRANTED BY THE  
INVIGILATOR.**

**QUESTION 1**

Themba Patrick Simelane, a cattle farmer, is the registered owner of Farm NO. 222; Shiselweni District; measuring 1,0240 hectares under Deed of Transfer No. 222/2002 dated the 4<sup>th</sup> August 2002, with diagram annexed. He has since subdivided his farm, and on the 14<sup>th</sup> December 2004 the Surveyor General approved and issued a sub-divisional diagram SG NO. S404/2004 in respect of the subdivided portion. On the 19<sup>th</sup> December 2004 he donated the said portion of land to his sister, Ntombi Patricia Dlamini who is married and already has property registered in her name. The said Simelane has instructed you, a conveyancer, to pass transfer of the said portion into the name of the donee.

- a) Inventing the necessary particulars, draft the following clauses of the Deed of Transfer you would prepare in favour of the donee;
- i. The Recital; (2 marks)
  - ii. The Vesting clause; (2 marks)
  - iii. The Property clause; and (2 marks)
  - iv. The Extending clause. (4 marks)
- b) Assuming the said Simelane had donated the whole of his farm to his sister, draft the Extending clause of the Deed of Transfer you would prepare in favour of the donee. (3 marks)
- c) List the documents you would lodge in the Deeds Office in support of the Deed of Transfer in respect of the whole unit. (7 marks)

**[Total: 20 Marks]**

**QUESTION 2**

- b) Muzi Petros Dlamini is the registered owner of Farm No. 1203 situated in the Lubombo District; measuring 4,4043 hectares under Deed of Transfer No. 488/2000 dated the 15<sup>th</sup> September 2000. The said Dlamini has been granted a loan by the Swaziland Development and Savings Bank for E150,000, on condition he provides security for the debt. He decides to subdivide his property so that he can take out a portion to be mortgaged in favour of the bank. A sub-divisional diagram SG NO.S103 of 2004 in respect of the portion has been approved and issued by the Surveyor General. The said Dlamini approaches you, a conveyancer, for advice regarding the procedure to be followed before the portion is mortgaged. Further, he instructs you to prepare the relevant deeds for registration in the Deed Office
- i. Advise your client on the procedure to be followed before the portion is mortgaged, citing relevant authority. (4 marks)

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- ii. List the documents required to be lodged in the Deeds Office in respect of the procedure you mentioned in (i) above. (3 marks]
  - iii. What deeds would you link for simultaneous registration in order to carry out your client's instructions? (2 marks)
  - iv. Inventing the necessary particulars, draft the Property Clause of the Mortgage Bond you would prepare in favour of the bank. (2 marks)
  - v. Calculate the amount of stamp duty payable in respect of the Mortgage Bond, and state the person liable for such duty. (3 marks)
- b) At a later date the said Dlamini instructs you that he has paid the amount owed to the bank in full and that he desires to transfer the said portion of land to Mandla Siphon Simelane who has since purchased it.
- Advise your client on the procedure to be followed before the said portion can be transferred, stating the requisite documents as well as relevant authority. (4 marks)
- c) Define the expression "substitution of a debtor" in relation to mortgage bonds. (2 marks)
- [Total: 20 Marks]**

**QUESTION 3**

- a) Sifiso Mandla Hleta has instructed you, a conveyancer, to apply for a certified copy of Deed of Transfer NO. 222 of 1998 made in his favour on the 5<sup>th</sup> of June 1988, which he has lost.
- i) Inventing the necessary particulars, draft the Affidavit and Application to be lodged in the Deeds Office in order to obtain a certified copy of the said deed. (10 marks)
  - ii) What documents and information would you lodge and furnish in support of the application? (4 marks)
- b) Define the following terms;
- i) "Linking", in relation to deeds and documents lodged in the Deeds Office. (2 marks)
  - ii) "Ranking", in relation to mortgage bonds. (2 marks)
  - iii) "Appearer", in relation to execution of Deeds of Transfer. (2 marks)
- [Total: 20 Marks]**

**QUESTION 4**

- (a) Section 25 of the Legal Practitioner's Act, 1964 as amended provides for the keeping of a protocol register by every notary.
- i. What is the purpose of a protocol register? (2 marks)
  - ii. What particulars of a notarial deed must be disclosed in a protocol register? (3 marks)
- b)
- i. What is a Minute, in relation to the notarial office? (2 marks)
  - ii. What is a notarial deed, in terms of the Deeds Registry Act, 1968? (3 marks)
  - iii. Mention any six essential elements of a Notarial Deed of Lease. (6 marks)
  - iv. What is the effect of registration of a notarial deed? (3 marks)
- [Total: 20 marks]**

**QUESTION 5**

- (a) What is an ante nuptial contract? (3 marks)
- (b) What requirement must be satisfied in order for an ante nuptial contract to be binding on third parties? (2 marks)
- (c) What is the manner of execution and registration of an ante nuptial contract executed in Swaziland? (4 marks)
- (d)
- i. What requirement must be satisfied in order for a Notarial Deed of Lease to be valid? (2 marks)
  - ii. What requirement must be satisfied in order for a Notarial Deed of Lease to be binding on third parties? (3 marks)
- (e) What requirement must be satisfied in respect of registration of a cession of a lease? (2 marks)
- (f) Define servitude. (2 marks)
- (g) What is the manner of creating a personal servitude? (2 marks)
- [Total: 20 Marks]**

**QUESTION 6**

- a) Distinguish between Release and Cancellation in relation to mortgage bonds. (4 marks)
- b) Mention three differences between a Deed of Transfer and a Deed of Cession. (6 marks)

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- c) State the requirement that must be satisfied in order for a contract of sale of land to be valid, citing relevant authority. (2 marks)
- d) Mention the transactions in respect of which the Land Speculation Control Act 1972 does not apply? (4 marks)
- e) Explain the requirement under the Deeds Registry Act, 1968 and the Deeds Registry Regulation, 1973 in the following circumstances:
  - i) If immovable property has been acquired by any person not married in community of property and transfer thereof has not been effected during the lifetime of such a person; (1 mark)
  - ii) If the person described in (i) above died after having sold his property to another person. (2 marks)
- f) What is a diagram deed? (1 mark)

**[Total: 20 Marks]**