

Course Code:L603/ L501 (S) 2005

UNIVERSITY OF SWAZILAND

FACULTY OF SOCIAL SCIENCE

DEPARTMENT OF LAW

SUPPLEMENTARY EXAMINATION PAPER, JULY 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 (Compulsory)**

- a) Draft the recital and vesting clauses in the following circumstances:
- i. Musa Bholoja Dlamini died testate and is survived by his wife Nomsa Grace Dlamini to whom he was married out of community of property. In terms of the will date 24<sup>th</sup> November 1999, the surviving spouse is the sole heiress. (6 marks)
  - ii. Mary Simelane donated certain property to her daughter Sipiwe Dorah Simelane on the 6<sup>th</sup> August 2004, which donation was accepted on the 8<sup>th</sup> August 2004. The said donee is married in community of property to Sabelo Sandanezwe Dlamini. (6 marks)
- b) Your client Sipho Samuel Mazibuko instructs you a conveyancer, to effect transfer of his property to Samukeliso Mandla Simelane to whom he sold it. The transferor holds the property under Deed of Transfer No. 480/1990 registered on the 10<sup>th</sup> September 1990. The property was first held under Crown Grant No. 115/1975 made in favour of Senzo Mafikizolo Dlamini on the 25<sup>th</sup> July 1975, with diagram annexed.

Using your own facts where necessary, draft the following clauses of the Deed of Transfer you would prepare in favour of the transferee:

- i. The Property clause; and (2 marks)
- ii. The Extending clause (6 marks)

**[Total: 20 Marks]**

**QUESTION 2**

- a) Section 16 of the Deeds Registry Act, 1968 stipulates special provisions relating to vesting of immovable property in women. Discuss the provisions of Section 16 (1) in relation to Sections 24 and 25 of the Marriage Act, 1964. (10 marks)
- b) Inventing the necessary particulars, describe the following transferees in a Deed of Transfer:
- i) A company; (2 marks)
  - ii) An unmarried girl aged 20 years; (2 marks)
  - iii) A deceased person not married in community of property; (2 marks)
  - iv) A partnership or firm; and (2 marks)
  - v) An association not for profit. (2 marks)

**[Total: 20 marks]**

**QUESTION 3**

- a) Mention any five provisions relating to preparation of deeds and documents as provided for in Deeds Registry Regulations, 1973. (10 marks)
- b) Define the following terms and expressions:
- i) A Power of Attorney to Pass Transfer; (2 marks)
  - ii) A Holding Title Deed; (2 marks)
  - iii) "Share" in relation to land; (1 mark)
  - iv) "Examination" in relation to deeds and documents lodged in the Deeds Office; (1 mark)
  - v) "Execution" in relation to deeds of transfer; and (2 marks)
  - vi) A Deed of Transfer (2 marks)

**[Total: 20 Marks]****QUESTION 4**

- (a) What requirements must be satisfied in relation to registration of notarial bonds? (8 marks)
- (b) What are the requirements relating to the registration of ante nuptial contracts executed in and outside Swaziland? (4 marks)
- (c) What is a long lease? (2 marks)
- (d) What requirements must be satisfied in order for a long lease to be binding on third parties? (3 marks)
- (e) What is the manner of creating a praedial servitude? (3 marks)

**[Total: 20 marks]****QUESTION 5**

- (a) Define the following terms in relation to the notarial office:
- i) Notarial deed; (4 marks)
  - ii) Notarial bond; (2 marks)
  - iii) Protocol; (2 marks)
  - iv) Minute; and (2 marks)
  - v) Protocol register (2 marks)
- (b) Distinguish between a mortgage bond and a notarial bond. (8 marks)

**[Total: 20 marks]**

**QUESTION 6**

Section 55 of the Deeds Registry Act, 1968 provides for the general rule relating to transfer of hypothecated immovable property.

- a) State the general rule as provided in the said Section of the Act. (4 marks)
- b) What is the exception to this general rule as stated in Section 56 of the Act, and what are the duties of the Registrar in respect of the exception? (16 marks)

**[Total: 20 marks]**