

Course Code: L603/L501 (M) 2006

UNIVERSITY OF SWAZILAND

FACULTY OF SOCIAL SCIENCE

DEPARTMENT OF LAW

FINAL EXAMINATION PAPER, MAY 2006

TITLE OF PAPER : CONVEYANCING AND NOTARIAL PRACTICE

COURSE CODE : L603/L501

TIME ALLOWED : THREE (3) HOURS

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

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

QUESTION 1 (Compulsory)**PART A**

Bholoja Patrick Dlamini, a cattle farmer, died testate on the 6th January 2005, being the registered owner of Farm No. 160, Lubombo District, measuring 32, 1040 hectares under Deed of Transfer No. 105/1985 dated the 16th July 1985, with diagram annexed. In September 1999 the said late Dlamini subdivided his property and took out a portion measuring 20, 3045 hectares represented on subdivisional diagram S.G. No. S104/1999 approved by the Surveyor General on the 16th June 1999. The value of the subdivided portion is E106,000-00. On the 19th June 2001, the said late Dlamini made a will and bequeathed the portion to his son, Siphon Daniel Dlamini, who has since died on the 16th December 2005 and was unmarried. Further, the said late Dlamini bequeathed the remainder of his property to Patricia Zodwa Simelane, to whom he was married out of community of property. The surviving spouse is the registered owner of Lot No. 193, Mbabane Township Extension No. 23 under Deed of Transfer No. 188/1990 dated 16th May 1990. You are instructed as a Conveyancer, to effect transfer of the properties into the names of the beneficiaries.

- (a) Inventing the necessary particulars, draft the following clauses of the Deed of Transfer you would prepare in respect of the remainder:
- i) The Recital; (3 marks)
 - ii) The Vesting Clause; (3 marks)
 - iii) The Property Clause; (2 marks)
 - iv) The Extending Clause. (3 marks)
- (b) List the documents you would lodge in the Deeds Registry together with the draft Deed of Transfer in respect of the remainder. (11 marks)
- (c) Inventing the necessary particulars, draft the following clauses of the Deed of Transfer you would prepare in respect of the portion:
- i) The Vesting Clause; (2 marks)
 - ii) The Property and Extending Clauses. (6 marks)
- (d) Calculate the amount of stamp duty payable in respect of the transfer of the portion. (2 marks)

PART B

- (i) What is a general clause, in relation to bonds? (2 marks)
- (ii) Define the term ranking, in relation to mortgage bonds. (2 marks)

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- (iii) Define the expression "substitution of a debtor" in relation to mortgage bonds. (2 marks)
- (iv) What requirement must be satisfied in order for a controlled transaction to be valid, in terms of the Land Speculation Control Act, 1972? (2 marks)

[TOTAL MARKS = 40]

QUESTION 2

Mefika Luke Simelane is the registered owner of Farm No. 234, Shiselweni District, measuring 4, 1045 hectares under Deed of Transfer No. 444/2000 dated the 13th September 2000. The said Simelane has been granted a loan by the Swaziland Development and Savings Bank for E180,000-00, on condition he provides security for the debt. He decides to subdivide his property so that he can take out a portion, which he will mortgage in favour of the bank, as security for the debt. A subdivisional diagram S.G. No. S109/2005 in respect of the portion has been approved and issued by the Surveyor General. The said Simelane approaches you, a conveyancer, for advice on the procedure to be followed before the portion can be mortgaged. He further instructs you to prepare the Mortgage Bond in favour of the bank.

- (a) Advise your client on the procedure, listing the documents relating to the procedure required to be lodged in the Deeds Registry together with the draft Mortgage Bond, stating the legal basis for your answer. [7 marks]
- (b) What are the duties of the Registrar in respect of the procedure you described in (a) above? [6 marks]
- (c) Inventing the necessary particulars, draft the Property Clause of the Mortgage Bond you would prepare in favour of the bank. [4 marks]
- (d) Assuming your client had instructed you to transfer the portion to another person, how would you describe the Deed of Transfer you would prepare in favour of the transferee, and why? [3 marks]

[Total: 20 marks]

QUESTION 3

Describe the requirements of the Deeds Registry Act, 1968 and the Deeds Registry Regulations, 1973, in the following circumstances:

- (i) If a piece of land is owned by two or more persons in undivided shares, and one or more of such persons acquires the share or shares of the remaining owner or owners of that piece of land; (2 marks)

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- (ii) If land or a real right or a bond is donated or bequeathed to the children born or to be born of any person; (2 marks)
 - (iii) If a portion of any piece of land is transferred, leased or ceded; (2 marks)
 - (iv) If any deed conferring title to land or any interest therein or any real right or any registered lease or sublease or registered cession thereof, or any mortgage or notarial bond is lost or destroyed and a copy is required other than for information or judicial information; (3 marks)
 - (v) If land or a real right registered in the name of a firm or partnership is acquired by any member or partner of such firm or partnership in his individual capacity; (2 marks)
 - (vi) If an owner of mortgaged immovable property wishes to transfer such property to another person; (2 marks)
 - (vii) If a lease or sublease is intended or required to be registered in the Deeds Registry; (2 marks)
 - (viii) 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 person; (2 marks)
 - (ix) If the person described in (viii) above died after having sold his property to another person; (2 marks)
 - (x) If any deed comprises more than one page. (1 mark)
- [Total: 20 marks]**

QUESTION 4

- (a) Define the following terms and expressions, in relation to the notarial office:
 - i) Notarial deed; (4 marks)
 - ii) Notarial bond; (2 marks)
 - iii) Protocol; (2 marks)
 - iv) Protest of a Bill of Exchange (2 marks)
 - v) Minute. (2 marks)
- (b)
 - i) What requirement must be satisfied in order for a Notarial Deed of Lease to be binding on third parties? (3 marks)
 - ii) What is the manner of creating a praedial servitude? (1 mark)

- iii) What requirement must be satisfied in order for an ante-nuptial contract executed in Swaziland to be binding on third parties? (3 marks)
 - iv) What is the term used to describe parties to a notarial deed? (1 mark)
 - v) What is the statutory duty of a notary in relation to all notarial deeds enacted by him? (2 marks)
- [Total: 20 marks]**

QUESTION 5

Distinguish between the following:

- (i) Cancellation and Release, in relation to mortgage bonds; (2 marks)
 - (ii) Exclusions and exemptions, in relation to the Land Speculation Control Act, 1972; (2 marks)
 - (iii) A Deed of Transfer and a Deed of Cession; (6 marks)
 - (iv) Execution and attestation, in relation to a deed; (2 marks)
 - (v) Appearer and Principal, in relation to a Deed of Transfer; (2 marks)
 - (vi) A notarial deed and an underhand deed; (2 marks)
 - (vii) A Certificate or Registered Title in respect of a portion of land and a Certificate of Consolidated Title. (4 marks)
- [Total: 20 marks]**