

UNIVERSITY OF SWAZILAND
FACULTY OF SOCIAL SCIENCE
DEPARTMENT OF LAW
FINAL EXAMINATION PAPER, MAY 2007

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

COURSE CODE : **L603/L501**

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

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

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

CONVEYANCING AND NOTARIAL PRACTICE MAIN
EXAMINATION 2007

ANSWER QUESTION ONE AND ANY THREE OTHER QUESTIONS

TIME ALLOWED: 3 HOURS

QUESTION ONE (COMPULSORY)

In the matter between Standard Bank V. Menzi Mgababa Dlamini (High Court Case No. 405/2005, Plaintiff bank obtained judgment against the Defendant for the payment of the sum of E205, 000-00 (Two Hundred and Five Thousand Emalangen) and costs. Pursuant to the judgment, an order was granted directing the Deputy Sheriff for the District of Hhohho to attach and take into execution certain property of the Defendant described as Lot No. 488 Thembelihle Township; measuring 4080 square metres held under Deed of Transfer No. 807/1984 dated 4th August 1984. The said property was first held by Sibusiso Patrick Simelane under Crown Grant No. 48/1976, with diagram annexed. The said property was sold in execution on the 19th June 2006 for the sum of E295, 000-00 (Two Hundred and Ninety Five Thousand Emalangen) to Ntombizodwa Grace Sibeko, a married Swazi female who is the registered owner of Lot No. 344 Thembelihle Township under Deed of Transfer No. 215/1990. You are instructed as a Conveyancer to pass transfer of the property into the name of the purchaser.

- a). State your Principal. (1 mark)
- b). Inventing the necessary particulars, draft the following clauses of the Deed of Transfer you would prepare in favour of the purchaser:
- (i). the recital; (5 marks)
 - (ii). the vesting clause; (6 marks)
 - (iii). the property clause; and (4 marks)
 - (iv). the extending clause (8 marks)
- c). List the documents you would lodge in the Deeds Registry together with the draft Deed of Transfer. (10 marks)
- d). Calculate the amount of transfer duty payable in respect of the transaction. (4 marks)
- f). Is stamp duty payable in respect of the transaction? Support your answer, citing relevant authority. (2 marks)

[Total: 40 marks]

QUESTION TWO

You are a practising Conveyancer. Your client Petros Muzi Mavuso is the owner of Lot No. 2418 Ngwane Park Township, Manzini District; measuring 3140 square metres held under Deed of Transfer No. 149/1992, with diagram annexed. The said property is mortgaged in favour of the Swaziland Building Society under Mortgage Bond No. 224/1992. The said Mavuso instructs you to pass transfer of the said property to Patricia Sebenele Zulu, a female purchaser who is willing to assume Mavuso's liabilities under the bond. Subsequent to the registration of transfer in favour of Zulu, the said Zulu instructed a land surveyor to subdivide the property and take out a portion thereof, measuring 1000 square metres. The portion is represented on sub divisional diagram SG No. S150/2005 approved by the Surveyor General on the 4th June 2005. On the 16th July 2006 the said Zulu sold the portion of land to Siyavuka Samuel Ndabandaba, and she has instructed you to pass transfer of the portion in favour of Ndabandaba.

- a). Advise Mavuso on the legal position regarding the transfer of the property in favour of Zulu, stating the requirements that must be satisfied in respect of the legal position. (3 marks)
- b). Describe the preliminary requirement that must be satisfied before transfer of the portion can be effected in favour of Ndabandaba, stating the document required to be lodged in the Deeds Registry as evidence of satisfaction of the requirement, citing relevant authority. (4 marks)
- c). Draft the document you stated in (b) above. (5 marks)
- d). Inventing the necessary particulars, draft the property and extending clauses of the Deed of Transfer you would prepare in favour of Ndabandaba. (6 marks)
- e). How would you describe the Deed of Transfer you would prepare in favour of Ndabandaba? Give a reason for your answer. (2 marks)

[Total: 20 marks]

QUESTION THREE

- a) Define the following terms;
- i). "owner" in relation to immovable property; (4 marks)
 - ii). "Linking", in relation to deeds and documents lodged in the Deeds Office; (3 marks)
 - iii). "Ranking", in relation to mortgage bonds; (3 marks)
 - iv). "General clause" in relation to bonds; (2 marks)
 - v). "Remaining extent" in relation to immovable property; (2 marks)
- b) Distinguish between exclusions and exemptions in relation to the Land Speculation Control Act, 1972. (2 marks)
- c) State the person liable to pay transfer duty and the time limit within which such duty is payable. (2 marks)
- d) Who may prepare a Power of Attorney to Pass Transfer? (2 marks)

[Total: 20 marks]

QUESTION FOUR

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

- a). If two or more persons, who own in undivided shares the whole of any piece or pieces of land, have agreed to partition that land; (2 marks)
- b). If an owner of mortgaged immovable property wishes to transfer such property to another person; (2 marks)
- c). If land or a real right registered in the name of a firm or a partnership is acquired by any member or partner of such firm or partnership in his individual capacity; (2 marks)

- d). 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)
- e). If land transferred is subject to special conditions limiting the rights of the owner; (2 marks)
- f). If a husband married in community of property desires to deal with land or a bond registered in the name of his wife; (2 marks)
- g). If land is to be transferred pursuant to the provisions of a will, codicil or other testamentary instrument; (2 marks)
- h). 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 and such person died after having sold his property to another person; (2 marks)
- i). If any deed comprises more than one page; (2 marks)
- j). If it is sought to transfer or cede immovable property to a person who has not attained majority; (2 marks)

[Total: 20 marks]

QUESTION FIVE

You are an attorney, conveyancer and notary in the law firm Mawandla & Associates. Miss Zodwa Beauty Dlamini and Mr. Mandla John Magagula instruct you that they intend to get married on the 6th August 2007 in terms of the Marriage Act, 1964, and that they desire that the intended marriage should not affect their property rights.

- a). Advise your clients on the deed you would prepare in order to satisfy their desire. (2 marks)
- b). State the parties to the deed you would prepare and the term used to describe them. (3 marks)

- c). State the manner of execution and registration of the deed you stated in (a) above, citing relevant authority. (4 marks)
- d). What is the effect of registration of the deed you stated in (a) above? (2 marks)
- e). How would you describe the deed you stated in (a) above? (3 marks)
- f). What is your statutory duty in respect of the deed you stated above? Support your answer with relevant authority. (3 marks)
- g). What duty is payable in respect of the deed you stated in (a) above, the amount and mode of payment thereof? (3 marks)

[Total: 20 marks]