

UNIVERSITY OF SWAZILAND
FACULTY OF SOCIAL SCIENCE
DEPARTMENT OF LAW
FINAL EXAMINATION, MAY 2008

TITLE OF PAPER : CONVEYANCING AND NOTARIAL PRACTICE

COURSE CODE : L 501/L 603

TIME ALLOWED : THREE (3) HOURS

INSTRUCTIONS : ANSWER ALL QUESTIONS.

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

CONVEYANCING AND NOTARIAL PRACTICE
MAIN EXAMINATION 2007/2008

ANSWER ALL QUESTIONS

TIME ALLOWED: 3 HOURS

QUESTION ONE

Part A

Manzolwandle Samuel Simelane, a cattle farmer, died testate on the 20th August 2007 being the registered owner of Farm No. 222 situate in the Lubombo District; measuring 4, 1845 hectares under Deed of Transfer No. 675/2001 dated 4th April 2001. The said late Simelane took transfer of the said property from Velaphi Samson Sibeko, who held it under Deed of Transfer No. 103/1990 dated 13th February 1990, with diagram annexed. In January 2007 the said late Simelane subdivided his property and took out a portion measuring 2, 1010 hectares represented on subdivisional diagram S. G. No. S146/2007 approved by the Surveyor General on the 14th March 2007. The value of the portion is E280, 000-00. On the 20th March 2007 the said late Simelane made a will and bequeathed the portion to his son Vusi Petros Simelane who has since died on the 29th September 2007 and was unmarried. The said late Simelane bequeathed the remainder of his property to his wife Elizabeth Siphwe Dlamini to whom he was married out of community of property. You have been instructed as a Conveyancer to pass 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 portion:

- (i). the recital; (2 marks)
- (ii). the vesting clause; (2 marks)
- (iii). the property and extending clauses (12 marks)

b). Inventing the necessary particulars, draft the following clauses of the Deed of Transfer you would prepare in respect of the remainder:

- (i). the vesting clause; (5 marks)
- (ii). the property clause; (4 marks)
- (iii). the extending clause (7 marks)

Part B

Senzo Velaphi Dlamini, a poultry farmer, is the registered owner of Farm No. 1007 situate in the Hhohho District, measuring 1, 1250 hectares under Deed of Transfer No. 444/1998 dated 14th February 1998. The value of the property is E350, 000-00. On the 4th September 2007 the said Dlamini donated the property to his son, Muzi Sam Dlamini, who is the registered owner of Farm No. 109 situate in the Manzini District under Deed of Transfer No. 109/2004 dated 27th February 2004. On the 6th November 2007, the said Dlamini instructed you, a Conveyancer to effect transfer of the property in favour of the donee.

List the documents you would lodge in the Deeds Registry in support of the Deed of Transfer you would prepare in favour of the donee.

(8 marks)

[Total: 40 marks]

QUESTION TWO

Part A

Mefika Simon Dlamini is the registered owner of Farm No. 441 situate in the Shiselweni District; measuring 8, 4876 hectares held under Deed of Transfer No. 448/1999 dated 24th August 1999. The said Dlamini has obtained a loan from Standard Bank for the sum of E120, 000-00, and has subdivided his property and took out a portion thereof measuring 1, 4208 hectares to be hypothecated in favour of the bank. The Surveyor General has since approved and issued a subdivisional diagram S. G. No. S 104/2007 in respect of the portion. The said Dlamini has instructed you, a Conveyancer, to advise him on the requirement to be satisfied relating to the mortgage bond, as well as to pass a mortgage bond in favour of the bank.

- a). Advise your client on the requirement to be satisfied before the portion is hypothecated, citing relevant authority. (3 marks)
- b). Specify the documents that you must lodge in the Deeds Registry in respect of the requirement you stated in (a) above. (6 marks)
- c). Draft the property clause of the Mortgage Bond you would prepare in favour of the bank. (4 marks)

d). Calculate the amount of stamp duty payable in respect of the Mortgage Bond. (2 marks)

Part B

Subsequent to the registration of the Mortgage Bond, the said Dlamini sold the portion on the 16th August 2007 to Sibongile Patricia Nkosi, a purchaser who is willing to assume Dlamini's liabilities under the mortgage bond. He instructs you, a Conveyancer, to effect transfer of the portion to the said Nkosi.

a). Advise Dlamini on the possibility of the transfer to Nkosi, citing relevant authority. (3 marks)

b). State the requirement to be satisfied relating to the transfer to Nkosi, and the documents to be produced to the Registrar relating to the requirement to be satisfied. (2 marks)

[Total: 20 marks]

QUESTION THREE

Mlondi Samuel Dlamini is the registered owner of Farm No. 441 situate in the Shiselweni District; measuring 8, 4876 hectares held under Deed of Transfer No. 148/2001 dated 24th August 2001. The said property is mortgaged in favour of the Swaziland Building Society under Mortgage Bond No. 155/2001 dated 24th August 2001. The said Dlamini has subdivided his property and took out a portion thereof measuring 1, 4208 hectares represented on subdivisional diagram S.G. No. S111/2007 approved by the Surveyor General on the 22nd September 2007. The said portion has been sold to Siviwe Elizabeth Hlophe. The said Dlamini has instructed you, a Conveyancer, to effect transfer of the portion to the said Hlophe and to advise him on the legal requirement to be satisfied relating to the transfer.

a). Advise your client on the requirement to be satisfied before the portion is transferred to the said Hlophe, citing relevant authority. (3 marks)

b). Specify the document would you require from the mortgagee in relation to the requirement you stated in (a) above. (2 marks)

c). Draft the document you would require from the mortgagee in satisfaction of the requirement you stated in (a) above. (11 marks)

d). Specify the document upon which you would effect transfer of the portion to the said Hlophe, citing relevant authority. (2 marks)

e). How would you describe the deed of transfer you would prepare in favour of the said Hlophe? Give a reason for your answer. (2 marks)

[Total: 20 marks]

QUESTION FOUR

a). The definition of the term “notary public” in the Deeds Registry Act, 1968, relates to certain deeds and other documents. What type of deeds and documents are referred to in the said definition? (4 marks)

b). Section 25 of the Legal Practitioner’s Act, 1964 as amended provides for the keeping of a protocol register by every notary public.

i). What is the purpose of a protocol register? (2 marks)

ii). What information must be disclosed in a protocol register in respect of every notarial deed? (6 marks)

c). What is a notarial deed of lease? (3 marks)

d). State the requirement that must be satisfied in order for a notarial deed of lease to be binding on third parties. (3 marks)

e). State the manner of executing a personal servitude. (2 marks)

[Total: 20 marks]