

UNIVERSITY OF SWAZILAND
FACULTY OF SOCIAL SCIENCE
DEPARTMENT OF LAW

SUPPLEMENTARY EXAMINATION PAPER, JULY 2010

- TITLE OF PAPER** : **CONVEYANCING AND NOTARIAL PRACTICE**
- COURSE CODE** : **L501**
- TIME ALLOWED** : **THREE (3) HOURS**
- INSTRUCTIONS** :
- (i) **ANSWER THREE (3) QUESTIONS FROM SECTION A, INCLUDING QUESTION 1 AND ONE (1) QUESTION FROM SECTION B.**
 - (ii) **ANSWER A TOTAL OF FOUR (4) QUESTIONS.**
 - (iii) **EACH QUESTION CARRIES A TOTAL MARK OF 25; THE TOTAL MARK IS 100**
 - (iv) **IN ANSWERING ANY QUESTION NOTE THAT THE QUALITY OF THE CONTENT, CLARITY OF EXPRESSION AND LEGIBILITY OF HANDWRITING ARE ABSOLUTELY ESSENTIAL.**
 - (v) **CANDIDATES SHOULD COMPLY WITH ALL DEEDS REGISTRY ACT REGULATIONS WHERE NECESSARY.**

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

SECTION A**[ANSWER THREE (3) QUESTIONS FROM THIS SECTION, INCLUDING QUESTION 1]****QUESTION 1**

Vusumuzi Boy Dlamini is the registered owner of Portion 47 of Farm No.11 situate in the district of Manzini, Swaziland on which he has erected a three bedroom house and a granny cottage. He holds the property under Deed of Transfer No.10/2000, to which a diagram is annexed, dated the 18th June, 2000. The property is 50,0000 hectares in extent. He wishes to sell a portion of the farm to Abel Zondwako Masuku and Cain Thandwa Dlamini. The property is mortgaged in favour of X Bank Limited for an amount of E100 000-00.

- (i) Advise Vusumuzi Boy Dlamini how he can achieve his goal. [3 marks]
 - (ii) Assuming that the Survey diagram annexed hereto relates to the portion he wishes to sell, draft the relevant property and extending clauses of the Deed of Transfer in favour of the purchasers. [5 marks]
 - (iii) Draft the operative clause of the document that would have to be signed by X Bank Limited for the transfer to succeed. [3 marks]
 - (iv) If Vusumuzi Boy Dlamini wanted to retain ownership of the subdivision (as opposed to selling it) how would he go about that? [5 marks]
 - (v) Would the property clauses of the document to be prepared in (iv) above be the same as in (ii) above? If not, what is the difference? [4 marks]
 - (vi) If there is a servitude over the remainder of the farm, as shown in the servitude diagram annexed hereto, what will be the effect, if any, on the way you draft your power of attorney to transfer and Deed of Transfer in favour of the purchasers? [5 marks]
- [25 MARKS]**

QUESTION 2

- (i) Inventing your own facts, draft the causa in respect of the following transactions:
 - (a) Joint Estate: Joint will with massing and bequest of property in deceased's name to survivor subject to a *fideicommissum*. [5 marks]
 - (b) Joint Estate: Joint will with massing with a usufruct to the survivor over property in name of deceased. [5 marks]

- (ii) Sections 44 and 45 of the Deeds Registry Act, No. 37 of 1968 provide for a method of transfer or cession by means of endorsement. Briefly discuss the requirements of these sections.

[15 marks]

[TOTAL: 25 MARKS]

QUESTION 3

- (i) Explain the following exceptions which are usually renounced in mortgage Bonds:

- (a) *Non Causa Debiti* [3 marks]
(b) *Beneficium Ordinis Seu Excussionis* [3 marks]
(c) *Beneficium Divisionis* [3 marks]

- (ii) Draft the causa of a Collateral Bond [5 marks]

- (iii) Your client Y Bank Limited instructs you to register a mortgage bond on the following facts:

Mr. Dlamini owns a farm at Sidvokodvo and wishes to bind himself to Y Bank Limited for an amount of E60 000.00 with interest at 9% per annum.

Draft the following clauses:

- (a) Acknowledgement Clause [2 marks]
(b) Cause of debt clause [2 marks]
(c) Ranking clause [2 marks]

- (iv) Inventing your own facts draft the property clause in the mortgage bond to be passed by Mr. Dlamini. Will it be different from the property clause in his Deed of Transfer? If yes, explain how?

[5 marks]

[25 MARKS]

QUESTION 4

- (i) Name three registers which the Registrar of Deeds is by Law required to open and keep.

[3 marks]

- (ii) What information should a Deeds Lodgement Cover contain?

[3 marks]

- (iii) Making up your own facts describe the Grantor of a Power of Attorney to Transfer:

- (a) By a Trustee in respect of property owned by a trust [3 marks]
(b) A woman married under Swazi Law and Custom [3 marks]
(c) Property registered in the name of a minor [3 marks]

- (iv) Vusi Sibisi and Mandla Dlamini own certain immovable property in equal undivided shares. Menzi Sibiyi approaches Vusi Sibisi and offers to buy his share or a fraction of his share in such immovable property. They come to you as a conveyancer for advice. Having regard to the provisions of the Deeds Registry Act 37 of 1968, advise the parties if this is possible and, if so, how either transactions may be possible. [10 marks]

[TOTAL: 25 MARKS]

SECTION B

[Answer any one (1) Question from this Section]

QUESTION 5

- (i) Muzi Thomas Dlamini and Menzi Jerry Masuku own separate adjoining farms in the Hhohho District. Menzi's farm is next to the road. Muzi, who has all along been residing in his town house in Mbabane decides to go and live on the farm, only to discover that his road to the farm has been heavily damaged by rain to the extent that it is no longer usable. The only option open is to cut through a section of Menzi's farm in order to gain access. Menzi has no objection so long as he gets E50,000.00 (fifty thousand Emalangen) compensation. Advise the parties on their respective rights and how Muzi can obtain a servitude over Menzi's farm. Draft the document the parties would have to sign and outline the procedure for its registration.

[15 marks]

- (ii) What is a Protocol Register? What information should it contain? [5 marks]

- (iii) Are there any formalities to be observed in respect of donations? If so, what are they? [2 marks]

- (iv) What is a *Donatio Mortis Causa*? [3 marks]

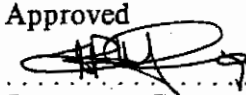
[TOTAL: 25 MARKS]

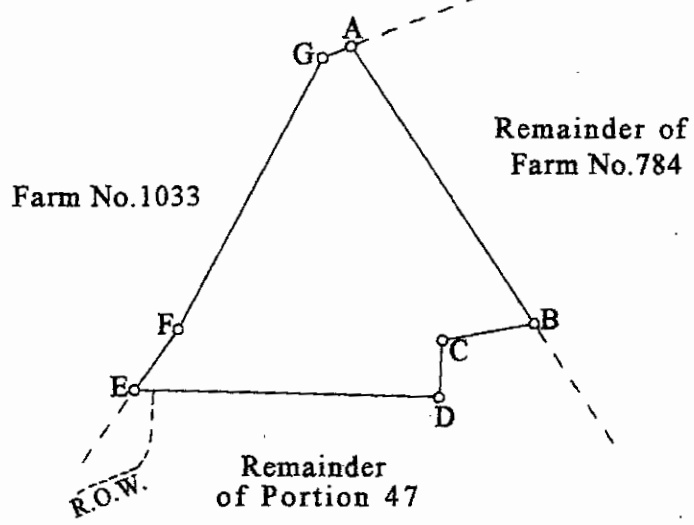
QUESTION 6

- (i) Briefly discuss the essential elements of a Notarial Deed of Trust. [15 marks]

- (ii) What is the role of a notary public where a woman married in community of property wishes to enter into a suretyship? Draft the document you would have to sign to signify compliance with duties. [10 marks]

SUBDIVISIONAL DIAGRAM

SIDES (metres)		ANGLE OF DIRECTIONS	CO-ORDINATES (metres) Y SYSTEM Lo.31° X		S.G.No.S130/2009
		CONSTANTS		+ 0,00 +2900 000,00	
AB	658,83	325.56.00	A	- 44 695,60 + 23 903,60	Approved  Surveyor General Date: 1.07.2009
BC	186,08	79.34.50	B	- 45 064,64 + 24 449,37	
CD	112,35	2.49.20	C	- 44 881,63 + 24 483,02	
DE	605,24	91.16.30	D	- 44 876,10 + 24 595,23	
EF	147,21	215.33.20	E	- 44 271,01 + 24 581,77	
FG	605,38	207.45.00	F	- 44 356,61 + 24 462,01	
GA	61,46	248.22.20	G	- 44 638,47 + 23 926,25	



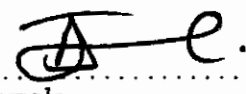
SCALE 1 : 15 000

Description of Beacons
 Iron standard in cairn...A,F,G
 12mm iron peg...B,C,D,E

The figure A B C D E F G
 represents 28,4734 Hectares of land, being
Portion 142 (a portion of Portion 47) of Farm No.11

Situate in the District of MANZINI Swaziland

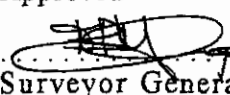
Surveyed in March 2009

by me. 
 D.M. Thwala
 Land Surveyor

This diagram relates to	The original diagram is	File No.	F11/2
No.	S.G. No. S 24/84	S.R. No.	61/2009
Dated.....	Transfer/Grant/Cession	Comp.	515
Registrar of Deeds.	Consent filed page 85	Drg No.	Sheet 12

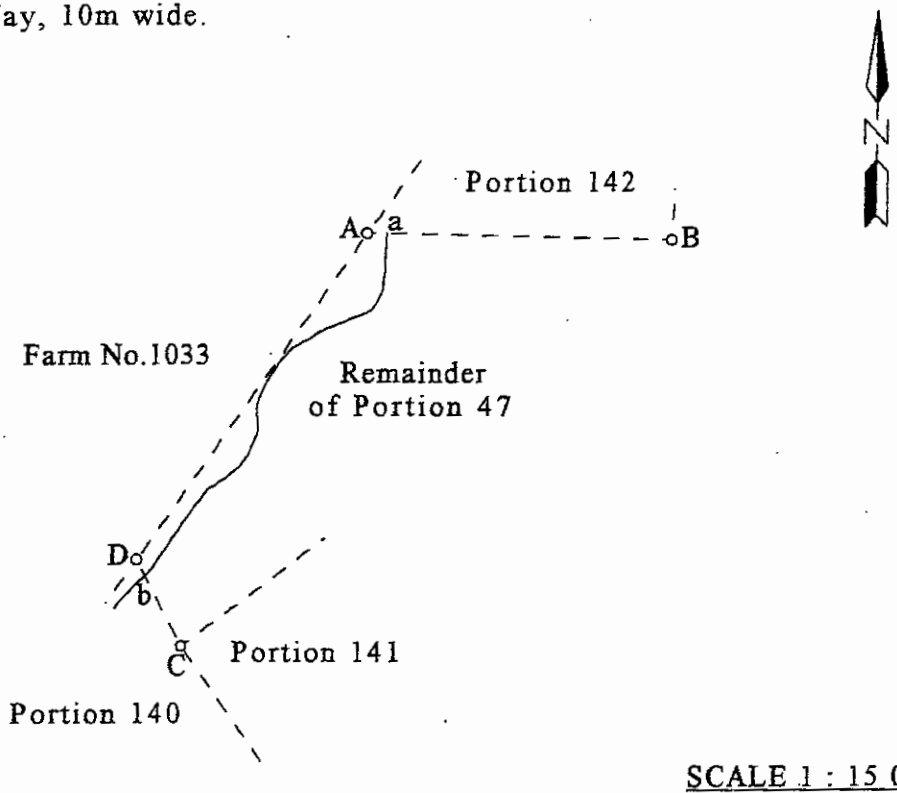


SERVITUDE DIAGRAM

SIDES (metres)		ANGLE OF DIRECTIONS	CO-ORDINATES (metres) Y SYSTEM Lo.31° X		S.G.No.S131/2009
		CONSTANTS	+ 0,00	+2900 000,00	
AB	605,24	271.16.30	A	- 44 271,01 + 24 581,77	Approved  Surveyor General Date: 1.07.2009.
			B	- 44 876,10 + 24 595,23	
CD	192,25	151.47.20	C	- 43 907,01 + 25 387,67	
DA	782,32	215.33.10	D	- 43 816,13 + 25 218,26	

Servitude Note:

The irregular line ab represent the centre line of a Servitude of Right of Way, 10m wide.



SCALE 1 : 15 000

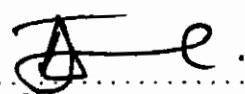
Description of Beacons
12mm iron peg...A,B,C,D

The irregular line a b represents a

Servitude of Right of Way over Remainder of Portion 47 of Farm No.11

Situate in the District of MANZINI Swaziland

Surveyed in March 2009

by me... 
D.M. Thwala
Land Surveyor

This diagram relates to	The original diagram is	File No.	F11/2
No.	S.G. No. S 24/84	S.R. No.	61/2009
Dated.....	Transfer/Grant/Cession	Comp.	515

