

UNIVERSITY OF SWAZILAND
FACULTY OF SOCIAL SCIENCE
DEPARTMENT OF LAW

261

MAIN EXAMINATION PAPER, MAY 2012

- TITLE OF PAPER : CONVEYANCING AND NOTARIAL PRACTICE**
- COURSE CODE : L 501**
- TIME ALLOWED : THREE (3) HOURS**
- INSTRUCTIONS :**
- (i) **QUESTION ONE (1) IS COMPULSORY.**
 - (ii) **ANSWER ANY OTHER THREE (3) QUESTIONS.**
 - (iii) **ANSWER A TOTAL OF FOUR (4) QUESTIONS.**
 - (iv) **EACH QUESTION CARRIES A TOTAL MARK OF [25]; THE TOTAL MARK IS [100]**
 - (v) **IN ANSWERING QUESTION NOTE THAT THE QUALITY OF THE CONTENT, CLARITY OF EXPRESSION AND LEGIBILITY OF HANDWRITING ARE ABSOLUTELY ESSENTIAL.**
 - (vi) **CANDIDATES SHOULD COMPLY WITH ALL DEEDS REGISTRY ACT REGULATIONS WHERE NECESSARY.**

THIS PAPER IS NOT TO BE OPENED UNTIL PERMISSION HAS BEEN GRANTED BY THE INVIGILATOR.

QUESTION 1 (Compulsory)

Julius Malinga died being the registered owner of Farm No. 681, Manzini District. He left a Will in terms of which he bequeathed the property to his son, Ratanang, subject to a life usufruct in favour of his wife, Puleng. You are the conveyancer attending to the transfer.

- (i) Invent additional facts and draft the *causa* of the deeds of Transfer in favour of Ratanang. [5]
- (ii) List all the supporting documents you would have to lodge with the Deeds office in respect of the transfer to Ratanang. [5]
- (iii) If, after the transfer into his name, Ratanang wanted to mortgage the property, what steps would you take to safeguard the interests of the prospective mortgagee against Puleng, and why? [5]
- (iv) Invent additional facts to draft the clause in the mortgage bond which would adequately protect the mortgagee's interests. [10]

[TOTAL MARKS: 25]

QUESTION 2

- (a) Section 55(1) of the Deeds Registry Act, 1968 provides that "no transfer of mortgaged land shall be attested or executed by the Registrar, and no cession of a mortgaged lease of immovable property, or of any mortgaged real right in land, shall be registered until the bond has been cancelled or the land, lease, or right has been released from the operation of the bond with the consent in writing of the holder thereof; ...".
 - (i) Distinguish between the legal effects of a consent to cancellation and a consent to release. [5]
 - (ii) Name two exceptions to the rule stated above. [5]
 - (iii) What is the position where a co-mortgagor seeks release from the operation of a mortgage bond? [5]
 - (iv) When is an application for the cancellation of an entry in terms of regulation 40(14) of the Deeds Registry Regulations, 1973 competent? [2]
 - (v) Invent your own facts and draft an application in terms of the above stated regulation. [8]

[TOTAL MARKS: 25]

QUESTION 3

Vusi Dlamini and Musa Maseko own certain immovable property in equal undivided shares. They agree to partition the land according to their respective interests.

- (i) List the essential requirements of an agreement to partition land under the Deeds Registry Act of 1968. [5]
- (ii) Outline the procedure the parties, and conveyancer would have to follow in order to implement their agreement. [10]
- (iii) Invent your own facts and draft only the property (and extending) clause in respect of both transfers (to Vusi and Musa). [10]

[TOTAL MARKS: 25]

QUESTION 4

- (a) What is the effect of a failure to register an ante-nuptial contract? [3]
- (b) Under what circumstances may an ante-nuptial contract be registered post-nuptially? [5]
- (c) Outline the procedure for the registration of an ante-nuptial contract executed outside Swaziland. [5]
- (d) Vulindlela Simelane and Sihle Masina have agreed to solemnize a marriage out of community of property and profit and loss. They instruct you to draft an ante-nuptial contract for them prior to their marriage.

Invent additional facts and prepare the appearance clause and recital for the ante-nuptial contract. [10]

- (e) List the documents you would have to lodge with the Deeds office. [2]

[TOTAL MARKS: 25]

QUESTION 5

- (a) Name three registers which the Registrar of Deeds is by law required to open and keep. [3]
- (b) What is a prep clause, and what is its significance? [3]
- (c) What do you understand the phrase "ranking in pari passu" to mean? [3]
- (d) Briefly discuss three exceptions to the Rule that Deeds should follow the sequence of their relative causes. [6]
- (e) Outline the procedure for obtaining a Certificate of Consolidated Title. [5]
- (f) List five transactions which are exempt from the payment of transfer duty under the Transfer Duty Act, 1902. [5]

[TOTAL MARKS: 25]