

**UNIVERSITY OF SWAZILAND**  
**FACULTY OF SOCIAL SCIENCE**  
**DEPARTMENT OF LAW**

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**MAIN EXAMINATION PAPER, NOVEMBER 2013**

- 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 QUESTIONS 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)**

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Draft the '*causa*' (recital) in respect of the transactions or set of facts listed below:

- (i) Husband and wife executed a joint will with massing and bequest of property registered in the deceased's name to the surviving spouse subject to a "*fideicommissum*", but fiduciary dies before registration. [5]
- (ii) Husband and wife executed a joint will with massing and bequest of property to children as heirs, subject to a "*usufruct*" in favour of the surviving wife, but who repudiates and claims half share. [5]
- (iii) Husband and wife married in community of property with property registered in the name of deceased husband who died intestate, and two minor children. [5]
- (iv) Sale to a company, not yet incorporated at the date of sale. [5]
- (v) Sale to a person who was married in community of property but who dies before registration of transfer. [5]

[TOTAL MARKS: 25]

**QUESTION 2**

- (i) What is partitioning of land? What are the essential requirements for the registration of partition transfers?  
N.B. In your answer give examples where possible. [5]
- (ii) Outline the information which a power of attorney or agreement of partition should contain. [5]
- (iii) When is it appropriate to apply for a Certificate of Registered Title in respect of an undivided share (section 33 of the Deeds Registry Act 1968)? [5]
- (iv) Invent your own facts and draft an application for the issue of a Certificate of Registered Title in respect of an undivided share. [10]

[TOTAL MARKS: 25]

**QUESTION 3**

- (a) Distinguish between a Collateral Bond and an Indemnity Bond. [5]
- (b) Invent your own facts and draft the "*causa*" of a Collateral Bond. [5]
- (c) Distinguish between a Mortgagee's Consent to Reduction in Cover and Consent to Part-payment. [5]
- (d) Invent your own facts and draft a Mortgagee's Consent to Reduction in Cover. [5]

(e) Explain the following legal exceptions which are usually renounced in mortgage bonds.

- (i) *"non causa debiti"* [2]  
 (ii) *"Beneficium ordinis seu excussionis"*. [3]

[TOTAL MARKS: 25]

**QUESTION 4**

- (a) What are the essential requirements for the registration of a personal servitude. [5]  
 (b) Distinguish between a *"Usufruct"* and a *"Fideicommissum"*. [5]  
 (c) Invent your own facts and draft a Notarial Deed creating a *"Usufruct"*. [15]

[TOTAL MARKS: 25]

**QUESTION 5**

- (a) Name five rules which must be complied with in drafting a Power of Attorney to transfer. [5]  
 (b) List any five transactions which are exempt from the payment of transfer duty under the Transfer Duty Act, 1902. [5]  
 (c) What is a protocol register? What information should it contain? [2]  
 (d) Making up your own facts describe the grantor of a Power of Attorney to transfer:  
 (i) property registered in the name of a minor. [2]  
 (ii) property registered in the name of a deceased person. [2]  
 (iii) property registered in the name of a company under liquidation. [2]  
 (iv) property registered in the name of a Trust. [2]  
 (v) property registered in the name of a woman married in accordance with the laws of a foreign country. [2]

[TOTAL MARKS: 25]