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UNIVERSITY OF SWAZILAND
FACULTY OF SOCIAL SCIENCE
DEPARTMENT OF LAW

SUPPLEMENTARY EXAMINATION PAPER, JULY 2014

- 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) Acquisition by former wife of a half share in land registered in former husband's name consequent upon division of the joint estate (divorce). [5]
- (ii) Donation to a woman married in community of property, the donation being free from such community. [5]
- (iii) Sale by the Sheriff of the High Court consequent upon a sale of execution. [5]
- (iv) Husband, married in community of property, executes a single will disposing of his half share in property registered in his name to his children. [5]
- (v) Sale to a person during his lifetime where the person was married in community of property. [5]

[TOTAL MARKS: 25]

QUESTION 2

- (i) Section 39(6) of the Deeds Registry Act, 1968 provides that "no diagram representing a combination of portions of two or more pieces of land shall be accepted for purposes of transfer until a certificate of consolidated title has been issued for the land represented on the diagram".
 - (a) List the essential requirements for the issue of a Certificate of Consolidated Title. [5]
 - (b) What procedure should be followed where one of the components is mortgaged? [2]
 - (c) Invent your own facts and draft a Mortgagees' Consent to the substitution of land included in a consolidation diagram for land originally mortgaged thereby. [8]
 - (d) Invent your own facts and draft an application for the issue of a Certificate of Consolidated Title in terms of Section 39 of the Deeds Registry Act. [10]

[TOTAL MARKS: 25]

QUESTION 3

- (a) Your client ABC Bank Limited instructs you, a conveyancer, to register a mortgage bond on the following facts:

Mandla Sibeko owns a farm situated at Siteki and wishes to bind himself to ABC Bank Limited for a loan of E60,000.00 (sixty thousand emalangen) and an overdraft facility with a limit of E50,000-00 (fifty thousand Emalangen).

Draft the following clauses:

- (i) Acknowledgement clause 231
[3]
- (ii) Cause of debt clause [3]

(b) After successfully registering the mortgage bond in favour of ABC Bank Limited Mandla Sibeko approaches you and instructs you to register a “*Usufruct*” in favour of his wife, Lungile.

- (i) Is this permissible in terms of the Deeds Registry Act? If yes, what steps would you take to implement your instructions and safeguard the interests of both ABC Bank Limited and Lungile? [5]
- (ii) Invent your own facts and draft the consent of ABC Bank Limited to the Registration of the “*usufruct*” in favour of Lungile. [10]

(c) Explain the following legal exceptions which are usually renounced in Mortgage Bonds:

- (i) “*De duobus vel pluribus reis debendi*” [2]
- (ii) “*Beneficium divisionis*” [2]

[TOTAL MARKS: 25]

QUESTION 4

- (a) Briefly discuss the essential elements of a Notarial Deed of Trust. [10]
- (b) Invent your own facts and draft a Notarial Deed of Waiver of “*Usufruct*” in favour of a mortgage bond about to be registered in favour of ABC Bank Limited for an amount of E200,000.00 (Two Hundred Thousand Emalangeneni. [15]

[TOTAL MARKS: 25]

QUESTION 5

- (a) Briefly discuss three exceptions to the Rule that Deeds shall follow the sequence of their relative causes. [6]
- (b) Name four registers which the Registrar of Deeds is by law required to open and keep. [4]
- (c) What do you understand the following to mean (in relation to mortgage bonds):
- (i) Waiver of preference [2]
- (ii) Ranking in “*Pari Passu*” [2]
- (d) Briefly discuss the statutory duties of a Notary Public in relation to all deeds executed before him. [5]
- (e) Briefly distinguish between personal and praedial servitudes. [6]

[TOTAL MARKS: 25]