

UNIVERSITY OF SWAZILAND
FACULTY OF SOCIAL SCIENCE
DEPARTMENT OF LAW

MAIN EXAMINATION PAPER, DECEMBER 2015

- 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)

Nathie Maseko and Vuli Sibeko are long time friends. They fall in love with a farm, and they decide to buy it jointly in order to carry out their respective farming activities. The purchase price for the farm is E1,000,000 (one million emalangeni). Nathi Maseko can only raise E100,000.00 (one hundred thousand emalangeni), and Vuli Sibeko E200,000.00 (two hundred thousand emalangeni) towards the purchase price. They both approach Nedbank (Swaziland) Limited for finance.

- (a) The bank manager calls you, as their conveyancer, and requests your advice on how they can structure the transaction(s) if they wish to finance Nathie Maseko and Vuli Sibeko. Advise the bank manager, specifying the transaction(s) that would have to be registered with the Deeds Office. [5]
- (b) After registration of the transaction(s) mentioned in (a) above, Nathie Maseko and Vuli Sibeko soon decide to separate their respective interests in the property, although they have not finished paying off their loans. Is this possible? If so, how can it be achieved? Draft the relevant document(s) which Nedbank (Swaziland) Limited would have to file with the Deeds Office. [10]
- (c) Invent your own additional facts and draft the property and extending clauses of the transfers to both Nathie Maseko and Vusi Sibeko pursuant to their agreement to separate their respective interests. [10]

[TOTAL MARKS: 25]

QUESTION 2

- (a) Themba Dlamini is the registered owner of Portion 1 of Farm No. 25 situate in the Manzini District, measuring 10,0000 (Ten comma zero zero zero zero) hectares. The property is mortgaged in favour of Standard Bank Limited for an amount of E1,000,000.00 (one million emalangeni). He approaches you as a conveyancer and requests your advice regarding the establishment of a township over the property.
- Advise him on the law and procedure applicable. [10]
- (b) Invent your additional facts and draft an application to open a township register. [5]
- (c) List all the supporting documents you would lodge with the Deeds Office together with your application to open the township register. [5]

- (d) Invent your additional facts and draft the consent you would require the mortgagee to sign.

[5]

[TOTAL MARKS: 25]

QUESTION 3

- (a) Mortgage bonds rank in preference in the order of their date of execution. However, preference can be waived in respect of a bond so as to give a later bond prior ranking.

- (i) Invent your own facts and draft a Waiver of Preference to give another bond prior ranking. [8]
- (ii) What do you understand by the phrase “ranking in *Pari Passu*”? [2]

- (b) Section 5(j) of the Deeds Registry Act, 1968 authorizes the Registrar of Deeds to “Register waivers of preference in respect of registered real rights in land, in favour of mortgage bonds registered or about to be registered” (underlining provided).

- (i) Why is it important (and necessary) to waive preference of a registered real right in favour of a mortgage bond. [2]
- (ii) Is the procedure the same where the bond is registered or, about to be registered? Explain your answer. [3]
- (iii) Invent your own facts and draft the actual waiver clause only of a registered real right in a bond about to be registered. [10]

[TOTAL MARKS: 25]

QUESTION 4

- (a) Briefly discuss the essential elements of a personal servitude. [5]
- (b) Briefly distinguish between a “usufruct” and “fideicommissum”. [5]
- (c) Invent your own facts and draft a notarial deed creating a personal servitude contained in a Will. [15]

[TOTAL MARKS: 25]

QUESTION 5

- (a) State five rules which must be complied with in describing land in deeds. [5]
- (b) Making up your own facts describe the grantor of a Power of Attorney to transfer by:
- (i) A person seeking to transfer property registered in the name of a minor. [2]
 - (ii) A trustee [2]
 - (iii) A liquidator [2]
 - (iv) An Agent [2]
 - (v) An executor [2]
- (c) What is a Protocol Register? What information should it contain? [2]
- (d) What is an Apostille? What information should it contain? [2]
- (e) 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 as a Notary Public to signify compliance with your duties. [6]

[TOTAL MARKS: 25]