

UNIVERSITY OF SWAZILAND
FACULTY OF SOCIAL SCIENCES
DEPARTMENT OF LAW

SUPPLEMENTARY EXAMINATION PAPER, JULY 2018

- TITLE OF PAPER : CONVEYANCING AND NOTARIAL PRACTICE
- COURSE CODE : L501
- TIME ALLOWED : THREE (3) HOURS
- INSTRUCTIONS :
- (i) QUESTION ONE (1) 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)

During his lifetime Vusi Abel Dlamini was the registered owner of Portion 19 (a portion of Portion 2) of Farm Calaisvale No., 693 situated in the District of Manzini. The property is held under Deed of Transfer 448/2013 dated 26 June, 2013. The property is 12,3624 (one two comma three six two four) hectares in extent as shown in the annexed diagram. He was married in community of property to Nomsa Alice Dlamini, and there are two children which were born of the marriage, namely Musa Victory Dlamini (a major) and Simanga Norman Dlamini (a minor)

During his lifetime Vusi Abel Dlamini entered into a sale agreement in terms of which he sold 3,0000 (three comma zero zero zero zero) hectares to Aaron Velaphi Motsa, who had not taken transfer at the time of his (Vusi Abel Dlamini's) death. He (Vusi Abel Dlamini) died having left a will in terms of which he bequeathed the property to his sons, subject to a usufruct in favour of his wife. The surviving spouse (Nomsa Alice Dlamini) has refused to abide by the terms of the will.

Alex Simelane (the executor) seeks your advice and instructs you to attend to the registration of the relevant transactions.

- (i) Advise the executor on what steps will have to be taken to enable registration of the relevant transfers. [2]
- (ii) Draft the causa in relation to:-
 - (a) The transfer to Aaron Velephi Motsa [4]
 - (b) The transfer to the beneficiaries in the estate and the surviving spouse. [4]
- (iii) List the supporting documents you would lodge in respect of the transfer in (ii) (b). [5]
- (iv) Upon taking transfer Aaron Motsa further subdivides his portion into equal proportions. He sells the newly subdivided portion to Sabelo Dlamini. Invent your own additional facts and draft only the property (and extending) clauses in respect of the transfer. [5]
- (v) Upon taking transfer Musa Victory Dlamini wants to apply for a bank loan, and use the property as security. Is this possible? Advise him. Invent any additional facts and draft only the application that would have to be filed by Musa Victory Dlamini with Registrar of Deeds. [5]

[TOTAL MARKS 25]

QUESTION 2

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 a 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 consent in writing of the holder thereof...”.

- (i) Distinguish between the legal effects of a consent to cancellation and a consent to release. [2]
- (ii) State two exceptions to the rule stated above. [2]
- (iii) What is the procedure where a co-mortgagor seeks release from the operation of a mortgage bond? [5]
- (iv) Invent your own facts and draft a co-mortgagor’s consent to release from the operation of a mortgage bond. [6]
- (v) When is an application for the cancellation of an entry in terms of regulation 40(14) of the Deeds Registry Regulations, 1973 competent? [2]
- (vi) Invent your own facts and draft an application in terms of the above stated regulation. [8]

[TOTAL MARKS 25]

QUESTION 3

Section 44 and 45 of the Deeds Registry Act, 1968 provide for a method by which ownership in land can be conveyed from one person to another through endorsement of existing titles (transfer or cession by means of endorsement).

- (i) Briefly discuss the requirements for a transfer or cession by means of endorsement as set out in the above section. [5]
- (ii) Invent your own facts and draft:
 - (a) An application for endorsement in terms of Section 45. [10]
 - (b) Consent by bondholder in terms of Section 45. [5]
 - (c) Consent by former spouse in terms of Section 45. [5]

[TOTAL MARKS: 25]

QUESTION 4

- (a) Invent your own facts and draft a Notarial Waiver of preference in favour of a bond about to be registered. [15]

- (b) Discuss the essential elements of a Notarial Deed of Trust. [10]

[TOTAL MARKS: 25]

QUESTION 5

- (a) State five rules which must be complied with in drafting a Power of Attorney to Transfer. [5]
- (b) Discuss any three exceptions to the Rule that Deeds shall follow the sequence of their relative causes. [6]
- (c) Briefly distinguish between a mortgagee's consent to reduction in cover and consent to part payment. [4]
- (d) Briefly distinguish between praedial and personal servitudes. [5]
- (e) Briefly discuss the circumstances under which an ante nuptial contract can be registered post-nuptially. [5]

[TOTAL MARKS: 25]