

UNIVERSITY OF ESWATINI
FACULTY OF SOCIAL SCIENCES
DEPARTMENT OF LAW
FINAL EXAMINATION PAPER, DECEMBER 2018

TITLE OF PAPER : CONVEYANCING & NOTARIAL PRACTICE
COURSE CODE : L501

TIME ALLOWED : THREE (3) HOURS

INSTRUCTIONS : ANSWER ANY FOUR (4) QUESTIONS

DO NOT OPEN THIS PAPER UNTIL PERMISSION HAS BEEN GRANTED BY THE
INVIGILATOR.

QUESTION 1

(a) Musa Dlamini and Phindile Dlamini were at all material times married in community of property. He is the registered owner of Certain Lot.25 Goje Township, Ezulwini. There is a registered mortgage bond for E250,000-00 (Two Hundred and Fifty Thousand Emalangen) in favour of Nedbank (Swaziland) Limited over the property. The couple are embroiled in divorce proceedings, but have agreed that he will retain the property. They subsequently obtain a Court Order (divorce) to that effect. You are instructed to attend to the transaction. Advise the parties on the applicable law. Invent your own facts and draft the relevant documents you would lodge with the Deeds Office to give effect to the transaction. If the documents you have lodged are in order, what steps will the Registrar take after registration thereof? [20 Marks]

(b) "Our land registration system is a hybrid system nominally based on a negative land registration system. Identify what makes it nominally based on a negative system and thereafter proceed to list the characteristics our local registration system, taking care to state which is positive and which is negative of these. [5 Marks]

[Total marks = 25]

QUESTION 2

(i) Briefly discuss the essential elements of a Notarial Deed of Trust.

[15 Marks]

ii. Briefly distinguish between personal and praedial servitudes. [5 Marks]

iii. Briefly discuss the legal requirements for the registration of Ante-Nuptial contracts.

[5 Marks]

[Total marks = 25]

QUESTION 3

Vusumuzi Boy Dlamini is the registered owner of Portion 47 of Farm No.11 situate in the district of Manzini, Eswatini on which he has erected a three bedroom house and a granny cottage. This property is found within the boundary of Manzini Municipal Council. He holds the property under Deed of Transfer No.10/2010 dated the 18th June, 2010. The property is 15,2345 hectares in extent. He wishes to sell a portion of the farm to Mary Sangweni, a woman married in community of property to John Sangweni.

(i) Advise Vusumuzi Boy Dlamini how he can achieve his goal. [3 Marks]

(ii) Invent your own relevant facts, where necessary, and draft the vesting, property and extending clauses of the Deed of Transfer in favour of the purchaser. [10 Marks]

(iii) Can the property be registered in only the name of the purchaser? Explain and support your by referring to authority. [3 Marks]

(iv) Calculate transfer duty and stamp duty, if the property was sold for E680,000.00 (Six Hundred and Eighty Thousand Emalangen). [4 Marks]

(v) List the documents you would lodge in support of the transfer to in (ii) above. [5 Marks]

[Total marks = 25]

QUESTION 4

(i) Explain the following exceptions which are usually renounced in mortgage Bonds.

- (a) *Non Causa Debit* [3 Marks]
(b) *Beneficium Ordinis Seu Excussionis* [3 Marks]
(c) *Beneficium Divisionis* [3 Marks]

(ii) Draft the causa of a Collateral Bond [5 Marks]

(iii) Your client Y Bank Limited instructs you to register a mortgage bond on the following facts:

Mr. Dlamini owns a farm at Sidvokodvo and wishes to bind himself to Y Bank Limited for an amount of E60,000.00 with interest at 9% per annum.

Draft the following clauses:

- (a) Acknowledgement Clause [2 Marks]
(b) Cause of debt clause [2 Marks]
(c) Ranking clause [2 Marks]

(iv) Inventing your own facts draft the property clause in the mortgage bond to be passed by Mr. Dlamini. Will it be different from the property clause in his Deed of Transfer? If yes, explain how? [5 Marks]

[Total marks = 25]

QUESTION 5

- (a) Briefly discuss the rules which should be complied with in describing land, whether within or out of an urban area in a title deed. [5 Marks]
- (b) Fully discuss the rules governing the identity of a person, be it natural or juristic, in a title deed. [10 marks]
- (c) Fully discuss the drafting standards governing/guiding the preparation of deeds [10 marks]