

UNIVERSITY OF ESWATINI
FACULTY OF SOCIAL SCIENCES
DEPARTMENT OF LAW
LAW407 RE-SIT EXAM PAPER

Programme of Study	:	LLB V
Course Code	:	LAW407
Time Allowed	:	3 Hours
Total Marks	:	100

INSTRUCTIONS:

1. Answer ALL questions.
2. Begin each question on a new page.
3. Make sure that your expressions are clear and that you refer to relevant case law.

THIS PAPER MAY NOT BE OPENED UNTIL PERMISSION HAS BEEN GRANTED BY INVIGILATOR(S).

QUESTION 1

It is trite law that signature of a negotiable instrument is a pre-requisite for liability of any party to it. Discuss fully, referring to authority.

[25 Marks]

QUESTION 2

What are the statutory and common law requirements for an indorsement to operate as a negotiation (in order that the transferee may become the indorsee and holder of the instrument)?

[25 Marks]

QUESTION 3

The case of *Energy Measurement (Pty) v FNB of SA* 2002 (3) SA 396 identified compelling considerations for the imposition of a duty of care on a collecting banker when opening a new account for a prospective client. Before you discuss those considerations, give a brief account of the material facts of the case, the legal issues as well as the reasoning behind the court's decision.

[25 MARKS]

QUESTION 4

With specific reference to the case of *Transitional Local Council of Randfontein v ABSA Bank Ltd* [2000] 2 All SA 134 (W), describe what constitutes a *depositum* in the law of banking.

[25 MARKS]

END OF EXAM

UNIVERSITY OF ESWATINI
FACULTY OF SOCIAL SCIENCES
DEPARTMENT OF LAW
SUPPLEMENTARY EXAMINATION PAPER, JANUARY 2018

TITLE OF PAPER : CONVEYANCING AND NOTARIAL PRACTICE

COURSE CODE : L501

TIME ALLOWED : THREE (3) HOURS

INSTRUCTIONS : ANSWER QUESTION 1 AND ANY THREE (3)
OTHER QUESTIONS

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

Question 1 [Compulsory]

During his lifetime, Mandla Kheswa was the registered owner of Portion 31 (a portion of portion 3) of Farm 470, situated in the Hhohho Region. The property is held under Deed of Transfer No. 73/2008 dated 16th July, 2008. The property is 12, 0547 (one two comma zero five four seven) hectares in extent. It has a mortgage bond in the sum of E500, 000.00 (Five hundred thousand Emalangeni) passed in favour of Solutions Bank. He was married in community of property to Yolanda Amara Kheswa (born Ziyane).

During his lifetime on the 6th September, 2017, Mandla Kheswa entered into a sale agreement in terms of which he sold the property to Mweli Amos Dlamini, who had not taken transfer at the time of Mandla's death on 12th May, 2018. The property was sold for E1, 000,000.00 (One million Emalangeni).

Susan Kheswa (the executor) seeks your advice and instructs you to attend to the registration of the relevant transaction(s).

- i. Describe the sequence the transaction will take from Mandla Kheswa to final recipient [2 marks]
- ii. Discuss the requirements and rationale of section 20 of the Deeds, Registry Act, 1968 and the exceptions thereto [3 marks]
- iii. Draft the Power of Attorney to transfer the property to Mweli Amos Dlamini (invent any further particulars you deem necessary for purposes of answering this question) [10 marks]
- iv. List the supporting documents you would lodge with the Deeds Office in respect of the transfer to Mweli Amos Dlamini. [4 marks]
- v. Draft the preamble and recital of the transfer to Mweli [6 marks]

[Total 25 marks]

QUESTION 2

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

[Total marks = 25]

QUESTION 3

Vusi Dlamini and Musa Maseko own certain immovable property in equal undivided shares. They agree to partition the land according to their respective interests.

- (i) List the essential requirements of an agreement to partition land under the Deeds Registry Act of 1968. [5 Marks]

- (ii) Outline the procedure the parties, and conveyance would have to follow in order to implement their agreement. [10 Marks]
- (iii) Invent your own facts and draft only the property (and extending) clause in respect of both transfers (to Vusi and Musa). [10 Marks]

[Total marks = 25]

QUESTION 4

- (a) Name three registers which the Registrar of Deeds is by law required to open and keep. [3 marks]
- (b) What is a prep clause, and what is its significance? [3 marks]
- (c) What do you understand the phrase “ranking in pari passu” to mean? [3 marks]
- (d) Briefly discuss three exceptions to the Rule that Deeds should follow the sequence of their relative causes. [6 marks]
- (e) Outline the procedure for obtaining a Certificate of Consolidated Title. [5 marks]
- (f) List five transactions which are exempt from the payment of transfer duty under the Transfer Duty Act, 1902. [5 marks]

[Total marks = 25]

Question 5

Ziikos Property Developers (Proprietary) Limited is the registered owner of Farm No. 234, situate in the Manzini Region Eswatini. The property is held under Deed of Transfer No. 12/2017 dated 21st January, 2017. The property measures 35, 2345 (Three Five comma two three four five) hectares . The company’s directors by resolution taken at its meeting held at Mbabane on the 25th August, 2018 mandated its director, Mluleki Vela Sithole to represent it in the facilitation of the subdivision of the property and any other subsequent

processes.

- i. How will Ziikos Property Developers (Proprietary) Limited go about subdividing the property from first step to approval and signing of diagrams? And what is the maximum allowable number of subdivisions? [3 marks]
- ii. If the company wanted to retain ownership of the subdivided properties under separate title deeds how it would the achieve this? Support answer with relevant authority? [2 marks]
- iii. One of the portions the company wants to retain under a separate title deed is worth E340, 000.00. (Three hundred and forty thousand Emalangeneni). How much stamp duty will the company pay? [5 marks]
- iv. If the company wanted to consolidate two off the subdivided properties? Would that be possible after the sub-division? and If, yes what are the requirements to be satisfied? [3 marks]
- v. The company intends to donate one subdivision measuring 10, 3315 (in words) to director Sithole's daughter. Draft the preamble and "causa" of the donation transfer to Alexis "Banju Banju" Sithole, subject to the condition that it shall be free of community of property. [7 marks]
- vi. A year after the daughter receives the donation transfer she sells the property to another person. Draft the property and extending clause as it will appear in the deed of transfer of this transaction. [5 marks]

[Total marks = 25]