



UNIVERSITY OF ESWATINI

FIRST SEMESTER MAIN EXAMINATION PAPER, NOVEMBER 2019

FACULTY OF SOCIAL SCIENCES

DEPARTMENT OF LAW

COURSE CODE: L501

TITLE OF PAPER: CONVEYANCING AND NOTARIAL PRACTICE

TIME ALLOWED: 3 HOURS

Instructions

1. Question 1 is compulsory
2. Answer any 3 other questions

*Candidates may complete the front cover of their answer book when instructed by the Chief Invigilator and sign their examination attendance cards but must **NOT** write anything else until the start of the examination period is announced.*

No electronic devices capable of storing and retrieving text, including electronic dictionaries and any form of foreign material may be used while in the examination room.

DO NOT turn examination paper over until instructed to do so.

Question 1 [Compulsory]

- i. Define a servitude and distinguish between a real and personal servitude. **6 marks**
- ii. Identify and distinguish two types of trusts **4 marks**
- iii. Invent your own facts and draft an Ante Nuptial Contract **10 marks**
- iv. Identify and discuss four common law duties of a notary public **5 marks**

[25 marks]

Question 2

Johannes Saviour Ndlela, is the registered owner of Farm No. 18, situate in the Shiselweni District, measuring 240 hectares under Deed of Transfer No. 23/2011 dated 24th January, 2011. He took transfer from Dika Simelane who held it under Deed of Transfer No. 422/2001 dated 6th July, 2001, with diagram annexed. In January, 2019 Johannes Saviour Ndlela subdivided his property and took out a portion measuring 100, 2345 hectares represented on sub-divisional diagram S.G. No. S6/2019 approved by the Surveyor General on the 31st January, 2019. The value of the portion is E950,000.00 On the 18th March, 2019, he sold the subdivided portion to his brother Vusi Mfanawababe "Makopane" Ndlela. On the same date he donated the remainder to his wife Maria Tiny Ndlela to whom he is married out of community of property. He has instructed you as his Conveyancer to pass transfer of the two properties.

- A. Invent any other relevant additional facts and draft the following clauses in the Deed of Transfer with respect to the portion:
 - i. The recital **2 marks**
 - ii. The vesting clause **2 marks**
 - iii. The property and extending clauses **6 marks**

- B. Invent any other additional relevant details and draft the following clauses in the Deed of Transfer with respect to the remainder
 - i. The preamble **3 marks**
 - ii. The vesting clause **3 marks**
 - iii. The property cum extending clause **4 marks**
- C. List the supporting documents required to accompany the transfer of the remainder **5 marks**

[25 marks]

Question 3

Musa and Menzi Ndlovu are twin brothers who happen to be very successful farmers. They have decided to jointly purchase a farm measuring 65 hectares. The purchase price is E1,860,000.00. During a site visit of the farm, the current farm owner, Mveli Nhleko, verbally informs them that the property is presently bonded with Eswatini Bank to the tune of E1,000,000.00. He further informs them that notwithstanding the bond, he will be able to transfer the property to them as it, after all, belongs to him. Mveli further informs the twins that he is a true African and as such only requires a firm handshake to conclude his deal. The three proceed to shake hands with each other to conclude the deal. Finally, he demands that they pay him the E1,860,000.00 directly into his personal account As the conveyancer instructed to effect the transfer:

- i. Advise them on whether a valid land sale has been concluded? Give authority for your answer. **3 marks**

- ii. In relation to the mortgage bond, advise them on whether transfer can happen as Mveli informs them? Give authority for your answer. **3 marks**

- iii. Advise the two brothers on the best practice when it comes to payment of the purchase price and the timing with respect to effecting such payment. Proceed to also inform them about 4 other duties of a conveyancer. **4 marks**

- iv. When approached Eswatini Bank agrees that the property be transferred to the brothers. Fully draft the document(s) the Bank would need to file with the Deeds Office. **10 marks**

- v. The brothers have E1,000,000.00 towards the purchase price. They decide to approach the bank for a loan on the balance. The bank agrees but insists on passing a Mortgage Bond over the newly acquired property.
 - a. Calculate how much transfer and stamp duty is payable in this transaction. Show all your workings. **3 marks**
 - b. State the name of the most appropriate bond to be passed in favour of the Bank in this given set of facts. **2 marks**

[25 marks]

Question 4

John Fakudze is the registered owner of Portion 6 of Farm No. 50 in the Hhohho District measuring 22,1234 hectares. He approaches you as a conveyancer as he wants to establish a township of his property.

- i. Advise him on the law and procedure applicable **10 marks**
- ii. Invent your own facts and draft the application to open a township register **5 marks**
- iii. List all the supporting documents to be lodged with the Deeds Office together with the application to open the township register **5 marks**
- iv. Distinguish between a General Plan and Sub-divisional diagram **2 marks**
- v. Distinguish between extent and the extending clause **3 marks**

[25 marks]

Question 5

Briefly discuss or define the following:

- i. Difference between Regulation 16 and section 26 **3 marks**
- ii. *Non numeratae pecuniae* **3 marks**
- iii. *Beneficium ordinis seu excussioness* **3 marks**
- iv. State the purpose of a cost clause in a mortgage bond **2 marks**
- v. Who at law pays stamp duty and authority thereof **2 marks**
- vi. Location and purpose of a “prep” clause **4 marks**
- vii. Land registration system in Eswatini **5 marks**

[25 marks]