



UNIVERSITY OF ESWATINI

SECOND SEMESTER MAIN EXAMINATION PAPER, MAY/JUNE 2020

FACULTY OF SOCIAL SCIENCES

DEPARTMENT OF LAW

COURSE CODE: LAW504

TITLE OF PAPER: NOTARIAL PRACTICE

TIME ALLOWED: 3 HOURS

Instructions

1. Answer any 4 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

Gozolo fuel Logistics, is a company with a fleet of 50 trucks and special container trailers it uses to supply petrol and diesel to fuel stations around the country. These trucks and trailers are cumulatively worth in excess of Seventy million Emalangeni. A deadly virus has spread throughout the world and this country such that the economy and business operations have been severely affected. Gozolo Fuel Logistics is not spared from this economic meltdown. It is, however, classified as an essential business by the government, so it has to continue operating but there is no cash flow to run its operations as its customers have been unable to pay it for three months now since February 2020.

They have heard that movable assets can be pledged with financial institutions as security but they are not sure if this information is accurate. They have come to you, as the local Notary Public, looking for answers on the following:

- i. Explain if it is indeed possible to pledge movables as security. If yes, what two document(s) need to be prepared and concluded by the parties? **6 marks**
- ii. At what stage does the security become real in favour of the Financial Institution against Gozolo Fuel Logistics and when does it become real against other third parties? **4 marks**
- iii. With your own facts, draft the document that makes such security real even against third parties. **15 marks**

Question 2

- i. Fully differentiate between praedial and personal servitudes. **10 marks**
- ii. Define two types of personal servitudes **5 marks**
- iii. Shop until you drop, is an international retail conglomerate. They have been offered a lease of 7 years at Ngwane Mall. They want to have their lease registered at the Deeds Office but Ngwane Mall is adamant that this is not legally possible. They have come to you for advise. Fully advise them on whether the same is possible. **5 marks**
- iv. List any five essential elements of a valid lease agreement. **5 marks**

Question 3

- i. A couple is intending on getting married soon. They are weighing different options to govern the proprietary consequences of their marriage. Someone has told them about something called an A.N.C. You have been approached as the local notary with a request fully explain to them what this is, how it differs from the other civil marital regime, and when a couple enters into a valid one. **10 marks**

- ii. They then ask you to draft them an A.N.C with accrual. **10 marks**

- iii. State , with reference to relevant authority, the requirements for entering into the marriage referred to (i.) above after the marriage has been solemnised. **5 marks**

Question 4

- i. A document destined for use abroad is executed in Eswatini. They want it to be under an Apostille Certificate. State the full name that governs the preparation of this certificate and proceed to list 5 requirements prescribed therein for a valid certificate. **10 marks**

- ii. Using your own facts draft such a Certificate. **10 marks**

- iii. Differentiate between authentication and certification **5 marks**

Question 5

- i. The founder of a trust together with the trustee has just executed a deed of trust before you, as a notary. He insists that you proceed to register trust with a government department so that he can be fully assured that even government recognises his entity. You decline. With reference to case law, explain your decision and the legal position on trusts in this jurisdiction. **15 marks**

- ii. Differentiate between an inter vivos and mortis causa trust. **5 marks**

- iii. Describe what a bewind trust is and also distinguish between a founder and settlor of a trust. **5 marks**