



UNIVERSITY OF ESWATINI

SPECIAL EXAMINATION PAPER, DECEMBER 2021

FACULTY OF SOCIAL SCIENCES

DEPARTMENT OF LAW

COURSE CODE: LAW504

TITLE OF PAPER: NOTARIAL PRACTICE

TIME ALLOWED: 3 HOURS

Instructions

- (i) ALL CANDIDATES MUST ANSWER QUESTION 1 (COMPULSORY).
- (ii) ANSWER ANY OTHER THREE (3) OF THE REMAINING QUESTIONS.
- (iii) ANSWER A TOTAL OF FOUR (4) QUESTIONS.

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

QUESTION 1 (COMPULSORY)

- (a) Discuss the requirements of an ante nuptial contract under the Deeds Registry Act. 5 marks
- (b) Can an ante nuptial Contract be registered postnuptially? If so, explain the procedure to be followed. 5 marks
- (c) Initiating your own facts, draft an ante nuptial contract. 15 marks

QUESTION 2

- a) Provide the 5 (five) essentials of a valid trust. 10 marks
- b) Briefly enumerate the provisions of a trust. 15 marks

QUESTION 3

- a) What is a long lease and what legal requirements in terms of S309 of the Transfer Duty Act 1902 must be complied with to make the lease valid? 5 marks
- b) What legal requirements must be complied with to render a long lease binding upon third parties and from what document is the property description derived? 5 marks
- c) What leases have to be notarialy executed?
- d) What is the effect of not executing such a lease notarialy?
- e) What is the effect of not lodging such leases with the deeds office?
- f) Within what time frame must such leases be lodged?

(25 marks)

QUESTION 4

- a) What property may be hypothecated under a Notarial Bond? 3 marks

- b) What is the difference between a General and Special Notarial Bond? 4 marks
- c) What determines the ranking of Notarial Bond? 3 marks
- d) Draft a clause setting out the case for a collateral Notarial Bond and a Notarial Surety Bond. 15 marks

QUESTION 5

- (a) Distinguish between a personal and praedial servitude. 10 marks
- (b) Mr. B. Sithole and Sam Dlamini own separate pieces of farms in the Shiselweni District. Mr. Sithole realizes that for his farming business, he has to draw water over Sam Dlamini's farm. Sam Dlamini does not object but insists on a payments of E 100,000.00 (One Hundred Thousand Emalangeni). Advise the parties on their respective rights and how Mr. B. Sithole can obtain a servitude on Mr Dlamini's farm. Draft the document which the parties would have to sign and outline the procedure for its registration. 15 marks