



UNIVERSITY OF ESWATINI

FIRST SEMESTER MAIN EXAMINATION PAPER,
DECEMBER/FEBRUARY 2020/2021

FACULTY OF SOCIAL SCIENCES

DEPARTMENT OF LAW

COURSE CODE: LAW505

TITLE OF PAPER: CONVEYANCING

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.
- (iv) CANDIDATES SHOULD COMPLY WITH ALL DEEDS REGISTRY ACT, 1968, AND REGULATIONS, WHERE NECESSARY.

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

QUESTION 1 (Compulsory)

You receive instructions from your client, Nedbank (Eswatini) Limited, to register a mortgage bond in its favour for an amount of E500,000.00 (Five hundred Thousand Emalangeni) over an immovable property registered in the name of their client Vusi Abel Dlamini. During your interview with Vusi Abel Dlamini you establish that the same immovable property is mortgaged in favour of First National Bank Limited for an amount of E300,000.00 (Three Hundred Thousand Emalangeni) and the debt secured by it has not been fully paid up. However, First National Bank is unwilling to have its mortgage bond cancelled, but is amenable to have the bond to be registered in favour of Nedbank to rank prior to its aforesaid mortgage bond. You further establish from First National Bank that their mortgage bond has been lost and cannot be found.

- (a) Advise the parties as to whether their instructions can be implemented, and if so how? 2 marks
- (b) List the documents you would have to prepare and lodge with the Deeds Office 3 marks
- (c) Draft the document you would prepare and lodge on behalf of First National Bank to indicate its consent 5 marks
- (d) Draft the application you would prepare and lodge on behalf of First National Bank relating to the lost mortgage bond 5 marks
- (e) Draft the notice you would publish in the Government gazette and local newspaper on behalf of First National Bank relating to the lost mortgage bond 4 marks
- (f) Explain the following legal exceptions
- (i) *de duobus vel pluribus reis debendi* 2 marks
- (ii) *beneficium ordinis seu excussionis* 2 marks
- (iii) *Non numerate pecuniae* 2 marks

Total: 25 marks

QUESTION 2

During his lifetime Musa David Matse was the registered owner of Portion 56 (a portion of Portion 18) of Farm Calaisvale II No.693 situate in the District of Manzini. The property is held under Deed of Transfer 694/2013 dated 26th November, 2013. The property is 5, 2686 (five comma two six eight six) hectares. He was married in community of property to Dudu Alice Matse, and there are two children born of the marriage.

During his lifetime the deceased entered into a sale agreement in terms of which he sold 2,0000 (two comma zero zero zero zero) hectares to Joseph Vusi Dlamini.

The particulars relating to this land parcel appear in the annexed diagram. The purchase price was paid in full. The deceased died having left a Will in terms of which he bequeathed the remainder of the property to his children in equal undivided shares, subject to a "*usufruct*" in favour of his wife. The surviving spouse (Dudu Alice Matse) has refused to abide by the terms of the Will.

The executor, Alex Matse, seeks your advice and instructs you to register all the relevant transfers.

- (a) Is the surviving spouse justified in her refusal to abide by the terms of the will? Explain. 5 marks
- (b) Advise the executor on what steps will have to be taken to enable the registration of the relevant transfers. 2 marks
- (c) Draft the causa/recital in relation to the following:
 - (i) The transfer to the Joseph Vusi Dlamini 4 marks
 - (ii) The transfer to the beneficiaries in the estate and the surviving spouse 5 marks
- (d) Draft the vesting clause of the transfer to the beneficiaries and surviving spouse 4 marks
- (d) Consult the relevant material and then draft the conditions clause in respect of the portion purchased by Joseph Vusi Dlamini. 5 marks

Total: 25 marks

Question 3

- (a) Invent your own facts to draft an application for a Certificate of Registered Title in respect of a portion of land. 15 marks
- (b) Outline the procedure for the establishment of a township, and the opening of a township register by the Registrar of Deeds. 10 marks

Total: 25 marks

Question 4

Section 44 and 45 of the Deeds Registry Act, 1968 provide for a method by which ownership in land can be conveyed from one person to another through endorsement of existing titles.

- (i) Briefly distinguish the two sections and discuss the requirements for a transfer by means of endorsement as set out in the above sections. 5 marks
- (ii) Invent your own facts and draft:
 - (a) An application for endorsement in terms of Section 45. 10 marks
 - (b) Consent by bondholder in terms of Section 45. 5 marks
 - (c) Consent by former spouse in terms of Section 45. 5 marks

Total: 25 marks

Question 5

Job Zulu died being the registered owner of Farm No.681 Manzini District. He left a will in terms of which he bequeathed the property to his son, Nathi, subject to a condition that on his son's death the property will devolve upon Nathi's children.

- (i) Invent additional facts and draft the *causa* in the deed of transfer in favour of Nathi. 5 marks
- (ii) Distinguish between a *usufruct and fideicommissum*. 5 marks
- (iii) After registration into his name can Nathi and his children alienate or the property? If yes, detail the procedure to be followed in either event. 5 marks
- (iv) Outline the procedure for the partition of land which is subject to *fedeicommissum*. 10 marks

Total: 25 marks