

UNIVERSITY OF SWAZILAND
FACULTY OF SOCIAL SCIENCE
DEPARTMENT OF LAW

MAIN EXAMINATION PAPER, MAY 2013

- TITLE OF PAPER : CONVEYANCING AND NOTARIAL PRACTICE**
- COURSE CODE : L 501**
- TIME ALLOWED : THREE (3) HOURS**
- INSTRUCTIONS :**
- (i) QUESTION ONE (1) IS COMPULSORY.**
 - (ii) ANSWER ANY OTHER THREE (3) QUESTIONS.**
 - (iii) ANSWER A TOTAL OF FOUR (4) QUESTIONS.**
 - (iv) EACH QUESTION CARRIES A TOTAL MARK OF [25]; THE TOTAL MARK IS [100]**
 - (v) IN ANSWERING QUESTIONS NOTE THAT THE QUALITY OF THE CONTENT, CLARITY OF EXPRESSION AND LEGIBILITY OF HANDWRITING ARE ABSOLUTELY ESSENTIAL.**
 - (vi) CANDIDATES SHOULD COMPLY WITH ALL DEEDS REGISTRY ACT REGULATIONS WHERE NECESSARY.**

THIS PAPER IS NOT TO BE OPENED UNTIL PERMISSION HAS BEEN GRANTED BY THE INVIGILATOR.

QUESTION 1 (Compulsory)

Sections 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 (transfer or cession by means of endorsement)

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

[TOTAL MARKS: 25]

QUESTION 2

- (i) Mortgage Bonds rank in preference in order of their date of execution. However, preference can be waived in respect of a bond so as to give another bond prior ranking.
 - (a) Invent your own facts and draft a waiver of preference to give another bond prior ranking. [8]
 - (b) What do you understand by the phrase "Ranking in PARI PASSU". [2]
- (ii) The Registrar shall register waivers of preference in respect of registered real rights in land, in favour of mortgage bonds, whether registered or about to be registered.
 - (a) Why is it important (and necessary) to waive preference of a registered real right in favour of a mortgage bond. [2]
 - (b) Is the procedure the same where the bond is registered or, about to be registered? [3]
 - (c) Invent your own facts and draft the actual waiver (clause) of a registered real right in a bond about to be registered. [10]

[TOTAL MARKS: 25]

QUESTION 3

Section 74(1) of the Deeds Registry Act, 1968 provides that "A praedial servitude in perpetuity or for a limited period may be created by means of a deed executed by the owners of the dominant and servient tenements and attested by a notary public".

- (i) Invent additional facts and draft a notarial deed creating a servitude of right of way 8,00 (eight) metres wide upon payment of consideration of E10,000.00 (Ten Thousand Emalangeni); and outline the procedure for registration of the servitude. [10]
- (ii) What procedure should be followed where the servient tenement is mortgaged or subject to another real right with which the servitude might conflict? [5]
- (iii) Outline the procedure for the cancellation of a *praedial servitude*. [5]
- (iv) Briefly distinguish between a *praedial* and personal servitude. [5]

[TOTAL MARKS: 25]

QUESTION 4

- (i) Briefly discuss the essential elements of a Notarial Deed of Trust. [15]
- (ii) Briefly distinguish between a *Usufruct* and a *fideicommissum*. [5]
- (iii) What is a Protocol Register? What information should it contain? [5]

[TOTAL MARKS: 25]

QUESTION 5

- (i) Name five rules which must be observed in the preparation of deeds and documents to be lodged for registration with the Deeds Office. [5]
- (ii) Name five rules which must be complied with in describing land in deeds. [5]
- (iii) What is a Prep Clause and what is its significance? [2]
- (iv) Explain the following legal exceptions which are usually renounced in mortgage bonds:
 - (a) *De Duobus vel Pluribus Reis De Bendi* [3]
 - (b) *Beneficium ordinis seu excussionis* [3]
- (v) Making up your own facts describe the grantor of a Power of Attorney to transfer:
 - (a) By a Trustee in respect of a property owned by a Trust. [3]
 - (b) By an Agent acting under a Power of Attorney. [4]

[TOTAL MARKS: 25]