

**UNIVERSITY OF SWAZILAND
FACULTY OF SOCIAL SCIENCE
DEPARTMENT OF LAW
MAIN EXAMINATION PAPER, DECEMBER, 2017**

- TITLE OF PAPER : CONVEYANCING AND NOTARIAL PRACTICE**
- COURSE CODE : L501**
- TIME ALLOWED : THREE (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) IN ANSWERING ANY QUESTION NOTE THAT THE QUALITY OF THE CONTENT, CLARITY OF EXPRESSION, AND LEGIBILITY OF HANDWRITING ARE ABSOLUTELY ESSENTIAL.**
 - (v) 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 (Swaziland) 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]
- (b) List the documents you would have to prepare and lodge with the Deeds Office [2]
- (c) Draft the document you would prepare and lodge on behalf of First National Bank to indicate its consent [5]
- (d) Draft the application you would prepare and lodge on behalf of First National Bank relating to the lost mortgage bond [5]
- (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 [2]
- (f) Explain the following legal exceptions –
 - (i) *de duobus vel pluribus reis debendi* [2]
 - (ii) *beneficium ordinis seu excussionis* [2]

- (g) Distinguish between a Consent to Reduction of Cover and a Consent to Part- payment [5]

[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 in extent as shown in the annexed diagram. 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, who was there and then acting as a promoter of a company yet to be incorporated. 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) Advise the executor on what steps will have to be taken to enable the registration of the relevant transfers. [3]

- (b) Draft the *causa*/recital in relation to-

- (i) The transfer to the company [5]
(ii) The transfer to the beneficiaries in the estate and the surviving spouse [5]

- (c) Draft the preamble in relation to the transfer specified in (b) (i) above [2]

- (d) Upon taking transfer the company further subdivides its newly acquired property into equal portions. One portion is sold to Samson Mavuso. Invent any additional relevant facts and draft only the property and extending clause in respect of the transfer to Samson Mavuso. [5]

- (e) Section 20 of the Deeds Registry Act, 1968 provides that in any transfer relating to land which is an asset in a joint estate, the surviving spouse shall be joined in his personal capacity with the executor of the deceased spouse. What is the rationale for the rule? What are the exceptions to the rule? [5]

[25 MARKS]

QUESTION 3

- (a) What is the effect of a failure to register an ante-nuptial contract? [2]
- (b) Under what circumstances can an ante-nuptial contract be registered post-nuptially? [3]
- (c) Outline the procedure for the registration of an ante-nuptial contract executed outside Swaziland. [3]
- (d) Vulindlela Simelane and Sihle Masina have agreed to solemnize a marriage out of community of property and profit and loss. They instruct you to draft a standard ante-nuptial contract for them prior to their marriage.
Invent any additional facts and draft the ante-nuptial contract for your clients [15]
- (e) List the documents you would have to lodge with the Deeds Office. [2]

[25 MARKS]

QUESTION 4

- (a) You are a Notary Public and are approached by Money Bank Limited, who are the holders of a mortgage bond for E500,000.00 (Five Hundred Thousand Emalangeni) registered in its favour on the 10th January, 2017. On accepting delivery of the holding title of the mortgaged property, the bank established that the mortgaged property is subject to a lifelong "*usufruct*" in favour of the mortgagor's mother, who is not willing to forego her right. The bank enquires whether their security is not diminished by the "*usufruct*".
- (i) What would you advise the bank? [3]
- (ii) Invent any relevant additional facts and draft the deed which you would prepare on behalf of the mortgagor's mother. [12]
- (b) What is the role of a Notary Public with respect to a woman who intends to intercede on behalf of another person as a surety? [2]
- (c) In relation to (b), invent your own facts and draft the document you would prepare as a Notary Public to indicate that you have discharged your duties. [8]

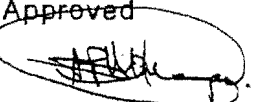
[25 MARKS]

QUESTION 5

- (a) State all the rules which must be complied with in drafting a Power of Attorney to Pass a Mortgage Bond [2]
- (b) Discuss any three exceptions to the rule that deeds shall follow the sequence of their relative causes [3]
- (c) What is an Apostille? What information should it contain? [4]
- (d) What is a Protocol register? What information should it contain? [4]
- (e) What is a survey diagram? What information should it contain? [4]
- (f) What is a "controlled transaction"? What are the exceptions to the definition? [4]
- (g) What is meant by "linking of deeds"? [2]
- (h) Explain what is meant by "Diagram for Deduction" [2]

[25 MARKS]

SUBDIVISIONAL DIAGRAM

SIDES metres		ANGLES OF DIRECTION	CO-ORDINATES Y System: LO 31° X			S.G. No.S240/2013
			Constants	0,00	+2 900 000,00	Approved
A B	160,55	277.34.40	A	-28 713,66	+37 792,93	 SURVEYOR-GENERAL Date: 14.10.2013
B C	108,47	294.20.40	B	-28 872,81	+37 814,10	
C D	255,58	25.01.20	C	-28 971,63	+37 858,82	
D E	141,51	107.59.10	D	-28 863,53	+38 090,42	
E F	28,52	176.38.40	E	-28 728,94	+38 046,72	
F A	225,73	176.32.40	F	-28 727,27	+38 018,25	

SERVITUDE DATA

F G	30,22	278.22.10	G	-28 757,17	+38 022,65
G H	125,55	289.53.30	H	-28 875,22	+38 065,36

CONNECTING DATA

H D	27,65	25.01.20			
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TRIG DATA

BOULDER	▲	-27 321,41	+35 335,56
LAAGGENOEG	▲	-29 328,61	+38 534,01



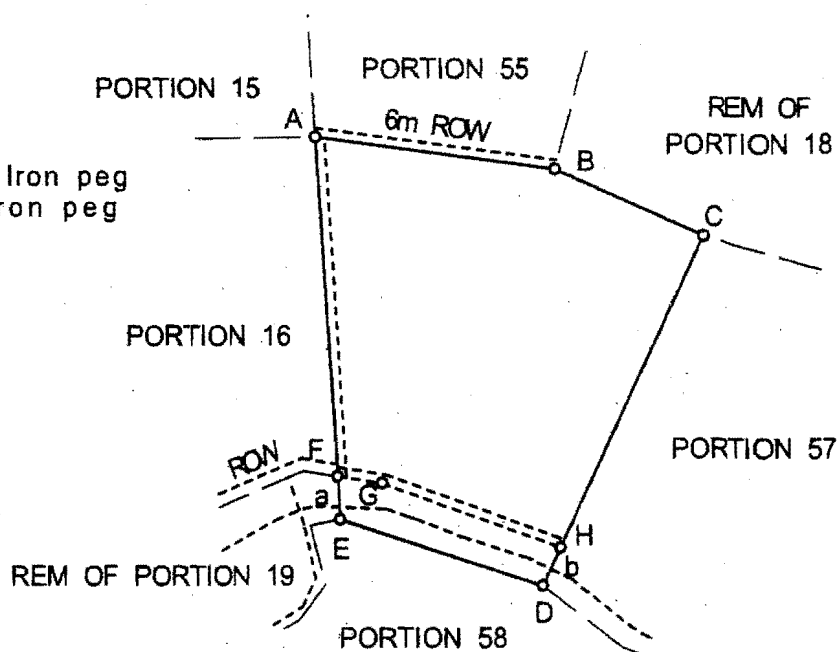
SERVITUDE NOTES:

- 1.The line FA represents the Western boundary of a Servitude of Right of Way 6,00 metres wide.
- 2.The line FGH represents the Southern boundary of a Servitude of Right of Way 6,00 metres wide.
- 3.The irregular line ab represents the Centre Line of a Servitude of Passage of Water 45,72 meters wide vide diagram S.G.No.S120/64, Deed of Servitude No.13/67

BEACON DESCRIPTIONS

A,B,C,D,E,F .. 12mm Iron peg
G,H 20mm Iron peg


Scale 1: 5000



The figure represents A B C D E F 5,2686 hectares of land being

PORTION 56 (A PORTION OF PORTION 18) OF FARM CALAISVALE II No.693

Situate in the District of Manzini
Surveyed in August 2013 by me


C.L. Forte
Land Surveyor

This diagram is annexed to No. 694 12013 Dated	The original diagram is S.G. No.S70/94 Consent filed on pg.17	File F693/1 S.R. No. 90/2013 Comp. 517 Drg No's. 3065
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Registrar of Deeds

