

Course Code: L603/L501 2006

UNIVERSITY OF SWAZILAND

FACULTY OF SOCIAL SCIENCE

DEPARTMENT OF LAW

SUPPLEMENTARY EXAMINATION PAPER, JULY 2006

TITLE OF PAPER : CONVEYANCING AND NOTARIAL PRACTICE

COURSE CODE : L603

TIME ALLOWED : THREE (3) HOURS

**INSTRUCTIONS : ANSWER QUESTION ONE AND ANY OTHER
THREE QUESTIONS.**

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

QUESTION 1 (Compulsory)**PART A**

Mabhula Patrick Dlamini, a cattle farmer, is the registered owner of Farm No.1116, Shiselweni District; measuring 10,1514 hectares under Deed of Transfer No. 103/2002 dated the 15th January 2002, with diagram annexed. The said Dlamini has since subdivided his farm, and on the 16th September 2005 the Surveyor General approved and issued a sub divisional diagram S.G. No. S147/2005 in respect of the subdivided portion. On the 18th October 2005, the said Dlamini donated the said portion of land to his sister, Ntombi Precious Dlamini, who is married and already has property registered in her name. The said Dlamini has instructed you, a Conveyancer, to pass transfer of the subdivided portion into the name of the donee.

- (a) Inventing the necessary particulars, draft the following clauses of the Deed of Transfer you would prepare in favour of the donee:
 - i. The Recital; (2 marks)
 - ii. The Vesting Clause; (5 marks)
 - iii. The Property and Extending clauses. (6 marks)
- (b) Assuming the said Dlamini had donated the whole of his farm to his sister, draft the extending clause of the Deed of Transfer you would prepare in favour of the donee. (3 marks)
- (c) List the documents you would lodge in the Deeds Registry in support of the Deed of Transfer in respect of the whole unit of land. (7 marks)

PART B

Senzo Fika Dlamini died testate having bequeathed his property to his children, viz Sizwe Patrick Dlamini, Vusi Petros Dlamini (both sons) and Zodwa Patience Dlamini (a daughter), in equal shares. The executor in the Estate Late Sizwe Fika Dlamini instructs you, a Conveyancer, to effect transfer of the property into the names of the beneficiaries.

- (a) Inventing the necessary particulars, draft the following clauses of the Deed of Transfer you would prepare in favour of the beneficiaries:
 - i. The Recital; (3 marks)
 - ii. The Vesting clause; (12 marks)
- (b) A year later, after registration of the transfer, the beneficiaries instruct you that they have agreed that each one of them should have separate titles, and further that you should effect transfer of their shares of each them.

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- i. What authority would you require from the beneficiaries in order to enable you to carry out their instructions? (1 mark)
- ii. What deeds would you prepare in order to achieve their desires in terms of the Deeds Registry Act, 1968? (1 mark)

[TOTAL MARKS = 40]**QUESTION 2**

The general rule is that if land is mortgaged, it cannot be transferred to another person without the mortgagee's consent to cancel the bond or release the property from the operation of the bond or the transferee has been substituted as a debtor in respect of the bond.

- (a) Distinguish between Cancellation and Release, in relation to mortgage bonds. (4 marks)
- (b) Under what circumstances may mortgaged property be transferred without the mortgagee's Consent to Cancellation or Consent to Release? (4 marks)
- (c) Define the expression "substitution of a debtor". (4 marks)
- (d) What requirements must be satisfied before substitution or a debtor can occur? (2 marks)
- (e) Mention any four circumstances under which a transferee may not be substituted as a debtor. (4 marks)
- (f) Explain the exception "Senatus consultum velleaunum". (2 marks)

[Total: 20 marks]**QUESTION 3**

- (a) Themba Muzi Shongwe has instructed you, a Conveyancer, to apply for a certified copy of Deed of Transfer No.111/1990 made in his favour on the 15th March 1990, which he has lost.
- (i) Inventing the necessary particulars, draft the Affidavit and Application to be lodged in the Deeds Registry in order to obtain a certified copy of the said Deed. (16 marks)
- (ii) What documents and information would you lodge and furnish respectively, in support of the Application. (4 marks)

[Total: 20 marks]

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QUESTION 4

- (a) What is a long lease, and what are the legal requirements that have to be satisfied in order for it to be valid as well as binding on third parties. (8 marks)
- (b) What requirements have to be satisfied relating to the registration of ante-nuptial contracts executed in and outside Swaziland? (4 marks)
- (c) What is the purpose of a Protocol register? (3 marks)
- (d) What is the effect of registration of a notarial deed? (2 marks)
- (e) What is the manner of creating a personal servitude? (1 mark)
- (f) What is an underhand deed? (2 marks)

[Total: 20 marks]

QUESTION 5

- (a) Mention any five provisions relating to the preparation of deeds and documents as provided in the Deeds Registry Regulations, 1973. (10 marks)
- (b) Define the term owner, in relation to immovable property, in terms of the Deeds Registry Act, 1968. (4 marks)
- (c) List any four persons who are exempt from the payment of transfer duty, in terms of the Transfer Duty Act, 1902. (4 marks)
- (d) List any two transactions in respect of which the Land Speculation Control Act, 1972, does not apply. (2 marks)

[Total: 20 marks]