

South African LAW SCHOOL

CONVEYANCING

2008

COURSE OUTLINE

PART 1 - THEORY

WHAT IS CONVEYANCING?

1. How conveyancing practice fits into the legal system and gives effect to common law principles and statutory provisions.
2. Office and function of Registrar of deeds;
3. Identifying land - survey, township and registration divisions, diagrams,
4. Identifying sectional title unit, sectional plan

GENERAL REQUIREMENTS in regard to completing/signing conveyancing documents

1. the parties – names, ID numbers/registration numbers;
2. black ink,
3. margins,
4. witnesses,
5. expression of extent – when only figures and when with words
6. expression of money – when only figures and when with words;
7. preparation certificate;

BASIC LEGAL CONCEPTS

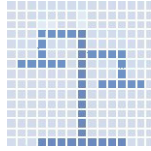
1. Property B types of B corporeal/incorporeal, *merx intra commercium vs merx extra commercium*, land vs Sectional Title unit
2. Ownership B *real vs personal rights*, rights of ownership, separation of rights of ownership; rights in one's own property B possess, use, abuse, fruits, etc; rights in property of another B servitude, mortgage, lease

LEGAL PERSONAE

1. Natural persons B capacity, powers, age and marriage affecting capacity, other types of legal disability
2. Juristic persons B companies, CCs B trusts, other juristic entities, constitutions, deemed and actual powers, authority and capacity,

CONTRACT

1. Basic principles of common law B common law requirements for validity i.r.o. contracts of sale, identifying the parties, identifying the *merx*, intention of the parties and consensus
2. Capacity, powers and authority to contract;
3. Contracts disposing of immovable property;
4. non-existent principal, pre-incorporation contracts;
5. Contractual aspects of mortgage and pledge



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ALIENATION OF LAND ACT

1. Definitions of *land*, “rights in land”, *alienate*, *deed of alienation*, *material terms*, *writing* and *signature*; “cooling off” period;
2. Deed of sale i.r.o. immovable property - standard and material provisions; suspensive and/or resolutive conditions, unusual terms, unlawful and/or immoral terms (*contra bonos mores*)

USURY ACT AND CREDIT AGREEMENTS ACT-

1. Deed of sale for immovable property not a credit agreement;
2. Loan Agreements and mortgage bonds, creditor, debtor, capital vs costs, recoverable costs mortgage bonds over immovable property, notarial bonds over movables,

DESCRIBING IMMOVABLE PROPERTY

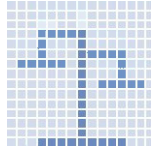
LAND

1. land *B* urban vs. agricultural land *B* *erf* and *farm*
2. a section i.t.o. Sectional Titles Act
3. an exclusive use area
4. expression of extent – square metres and hectares
5. expression of money
6. which figures are also expressed in words and when

SECTIONAL TITLE UNIT

Basic concepts

1. the Act creates a new type of *res* which is *immovable property*
2. the sectional plan;
2. the *Body Corporate* = a *statutory partnership*
3. a section;
4. an exclusive use area
5. common property
6. participation quota;
7. identifying sections vs exclusive use areas



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TRANSFER DUTY ACT

Definition of

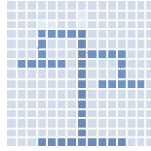
1. Acquisition
2. Immovable property
3. Valuable consideration
4. Cash and Kind
5. Fair market value
6. Exemptions from payment of transfer duty, e.g. VAT transactions, inheritance, transfers to ecclesiastical and/or educational institutions

CALCULATING TRANSFER DUTY

1. acquisition by natural person or estate of deceased natural person
2. acquisition by company, CC or trust
3. calculating duty i.r.o. acquisitions of shares in property

OTHER LAWS & LEGISLATION AFFECTING CONVEYANCING PRACTICE

Stamp Duties Act,
Matrimonial Property Act,
Administration of Estates Act,
Companies Act,
Close Corporation Act,
Trust Moneys Protection Act,
law of nuisance,
water rights,
Rules of High Court,
Magistrate=s Court Act,
jurisdiction



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PART 2 - PRACTICE

TRANSFERS

1. Transfers of land and sectional title units; deeds office computer enquiries, extracting information from deeds office computer print out;
2. Different *causae* and how to describe in the Power of Attorney, sale, donation, exchange, inheritance; expropriation transfers;
3. Obtaining supporting documents – ID document, marriage certificate; constitution of juristic entities
4. Preparation of preliminary transfer documents; obtaining rates clearance and transfer duty receipts/exemptions

DEED OF TRANSFER - LAND

1. Transferor
2. Transferee
3. *causa*, and date of transaction
4. property
5. extending clause
6. conditions of title
7. disentitlement of transferor
8. Disclosure of purchase price/value;

DEED OF TRANSFER – SECTIONAL TITLE UNIT

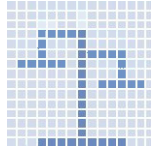
1. Transferor
2. Transferee
3. *causa*, date of sale, disclosure of purchase price/value;
4. property
5. no extending clause
6. conditions of title incorporated by reference
7. disentitlement of transferor

DRAFTING THE EXTENDING CLAUSE

1. diagram Deed;
2. second transfer;
3. all subsequent transfers

EXEMPTIONS FROM TRANSFER DUTY

1. *Acquisition* as defined in Transfer Duty Act
2. Categories of acquisitions exempt B VAT transactions, inheritances, acquisitions by the State or its organs; partition and rectification transfers;
3. Ecclesiastical/educational bodies of a public nature



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ADDITIONAL DOCUMENTS in regard to transactions exempt from transfer duty

1. VAT 249 declaration by Seller
2. Affidavit as to *public nature* of ecclesiastical or educational institutions
3. Transfer duty Form K

TRANSFERS by endorsement

1. i.t.o. Section 45bis of Deeds Registries Act - divorce of spouses married in community
2. i.t.o. Section 45 on death of one of spouses who was married in community of property
3. i.t.o. Section 45 from executor in deceased estate in favour of Administrators (trustees) of testamentary trust.

SECTIONAL TITLE TRANSFER

1. describing the parties;
2. describing sectional title property;
3. levy clearance vs rates clearance

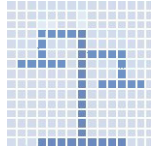
COMPARISON – transfers of land vs sectional title units

MORTGAGE BONDS

1. Banks – obligations of conveyancer to the bank;
2. what supporting documents to obtain
 1. Basic principles - contracts of loans of money and mortgage;
3. the legal nature of mortgage - real right, preference on insolvency;
4. preparation of documents for signature - the "loan agreement", solvency and marital status, resolutions by juristic entities
 - i. Credit Agreements Act and Usury Act applying to loans of money
5. ranking
6. Which title conditions to disclose in bond
7. various *causa* of mortgage -
 - loans of money;
 - covering bond
 - Surety bond
 - Indemnity bond
8. Preparing bond documents
9. What gets lodged

SECTIONAL TITLE MORTGAGE BONDS

1. Format differs from bond over land;
2. Method of execution differs
3. describing the property section/s and EUA/s



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MORE ON MORTGAGE BONDS

1. cancellations and releases
2. reduction of cover
3. waiver of preference
4. substitution of debtor

5. Cession of rights in a mortgage bond and delegation of obligations mortgage bond conditions capable of variation or not
6. Substitution of debtor

COMPARISON – bonds over land vs sectional title units

SUBDIVISION OF LAND - DIAGRAM

1. reading a diagram
2. drafting the extending clause for a new subdivision on a diagram

SUBDIVISION OF LAND – GENERAL PLAN

3. reading a general plan
4. drafting the extending clause for a new subdivision on a general plan

CERTIFICATES OF TITLE

Certificate of Registered Title

1. Sec. 43 of DRA - various types of CRT and when applicable,
2. mortgage erven on a general plan;
3. cannot exhaust title deed;
4. drafting the application
5. drafting the deed

Certificate of Consolidated Title

1. Sec. 40 of DRA B various types of consolidation;
2. understanding the diagram and components;
3. drafting the application
4. Drafting the deed

LODGMET

1. documents lodged at the Deeds Office,
2. linking
3. supporting documents kept in file

