

Unit 1 : PUN system

- Land registrations are generally positive or negative

Positive

- State guarantee to 3rd party that register in deeds registry is an authoritative record to clearly defined units of land
- State examines/investigates doc & transactions for legality
- State captures & maintains a register of title
- Register of title is linked to cadastral system of maps & diagrams
- Transfer takes place when register of title is amended & any deeds are merely endorsed
- New deeds not NB as main source of info is register
- Linking of transactions occurs
- State guarantees accuracy of deed register & liable for shortcomings
- High degree of state interference

Negative

- State gives no guarantee to 3rd party regarding accuracy of state deeds registry
- State simply records deeds submitted at face value =
- No examination of deeds or investigation prior to recording
- Transfer effected on new deed, not state register, so new deed created for each transaction
- Usually no link to cadastral system of maps & diagrams
- cannot rely on accuracy of state records, inaccurate or incomplete
- State incurs no liability for same
- Parties often guarantee their rights by taking out private insurance
- Minimal state interference

- SA based on statute Alienation of Land Act 68 of 1981
Deeds Registries Act 47 of 1937

- System has following components:

1) Deeds registry Pretoria, Johannesburg, Pietermaritzburg,
Cape Town, KWT, Mthatha, Kimberley, Uitenhage, Nelson Mandela Bay

2) Conveyancer

3) Land Survey: person specialised survey qualifications,
land must be precisely identified, measured & depicted
on plan or diagram

4) Surveyor-General office: cadastral system is recorded &
maintained

5) Local Authorities: consent to developments & subdivisions
levies, rates, taxes & services

6) State Department: who must consent in some cases

7) SARS: transfer duty

8) Property developers: establish townships, subdivide, erect

9) Financial institutions: provide finance

If transactions not recorded, comes to new owner
Bonds → bond not cancelled so become new owners

Standard Bank v Breitenbach mortgage bond not registered
Court found was duly registered when registrar signed same even
if not endorsed on Title Deed

- Although many regard the aspect system seen as a positive one

- Can recover ^{damages} \$99 from State if prove:
- 1) loss resulted from Act or omission of a registrar or an official employed in a registry
 - 2) the act or omission was committed in bad faith or as a result of a failure to exercise reasonable care & diligence

① - Security of title not due to state guarantee but unique private-public partnership between DO & Conveyancing profession

- National transfer process:

- 1) Valid DOS (to S26) of Alteration of Land
- 2) merge & finance between S & P
- 3) deal with coordination/guarantee requirements of bank
- 4) merge land registration to secure payment
- 5) get rates clearance
- 6) get TDR

Unit 2: Conveyancer

Requirements:

- specialised in preparation of deeds & docs destined for deed registry
- passed an additional national conveying exam
- been admitted to practise by HC
- been enrolled on an electronic register of conveyancers kept by DO in terms of Reg 16

Duties

- 1) Ensure validity of DOS to S2 of Alteration Act
 - signed by parties
- 2) Manage financial matters: the transaction process
 - ensure enough cash guarantees to cover considerations payable
 - enough cash to cancel S bond
 - collect money for tax, rates, deadweight leg, transfer costs
 - that undertakings can be honoured i.e. estate agents
 - provide guarantees pay everyone out

- 3) Prepare deeds = documents = take responsibility for correctness of facts
 - to prepare means draw drafts & sign preparation clause
 - S 15(1) & (2) & Reg 44(1) certify correctness & responsibility of preparer
 - don't have to lodge proof
 - can sign for any practice
 - sign all alterations & initial bottom of each page
 - for small alterations conveyancer who creates instead of conveyancer who prepares can initial (opinion of registrar)

- 4) Affidavits for preparer: name, id, marital
 - Reg 44(2) Date of sale
 - Description of property
 - purchase price
 - amount of bond

- Attorney, notary, conveyancer can prepare 44A
 - Power of Attorney application
 - consent to act of registration
 - agent of partition S 26

Signature of attorney or notary must be certified by conveyancer who countersigns

- Affidavits by preparer

- SISA conveyancer accepts responsibility
- RWA must ensure
 - all copies identical (for non microfilming)
 - all conditions correctly brought forward
 - person signing has authority to sign
 - names, id, marital status correct to best ability
 - special conditions brought forward
- Registrar accepts correct
- R20 requests
 - good quality A4 paper
 - top half blank for endorsements
 - blank spaces ruled, through
 - 4cm binding margin
 - black ink
 - all alterations initialled
 - copies certified by notary or conveyancer

4) Link deeds

- lodge separate cues
- complete lodgment cues
- registered when last in batch signed by registrar
- Codes
 - T transfer
 - B bond
 - BC bond completion 3 charges
 - PA general power of attorney
 - H ANC
 - VA lost copies
- Covers: from number left hand cover
 release number
 linking block
 original document block
- From linking only reject those with problems

s) Lodge Deeds (with receiving clerk)

- arrange simultaneous lodgement
- L45(i) lodged by conveyancer practising at seat of DO
- grant dept may lodge themselves
- DOTS trading

b) Executive's register deeds

- 5/6 working days come up on prep
- last chance to amend
- sign execution clause together with registrar
- registered when last doc signed

7) After registration

- deal with finance
- get deed back & deliver

Unit 3 : Registrar of Deeds

Hierarchy

- Minister of Affairs
- Chief Registrar of Deeds
- Registrar of Deeds
- Deputy Registrar of Deeds
- Assistant Registrar of Deeds

- S2 Diploma Jurs or equivalent & proven expertise or capacity

- Sections: Examination

Strongroom
Data

Microfilm/scanning

Information

Personnel & administration

- 53 duties of registrar

- 1) Take care & preserve all records
- 2) Examine all deeds
 - legal provisions complied with
 - checking? disposing of interdicts
 - endorsing for registration
 - updating deeds registry record
- 3) Record interdicts

1	general interdicts & court orders
1AT	attachment
1C	Caveats
1CY	liquidation & judicial management
154/110	SC interdict
1 Reh	Rehabilitation

4) keep registers

5) Give access to public registers & records

- pays prescribed fee & complies prescribed conditions
- triple supply of info
 - Deed web system
 - scanned, electronic copies
 - manual card-based recording system

Power of Registrar s4

- 1) require production of proof by affidavit or otherwise of any fact
- 2) rectify any error relating to name, description or condition
- 3) issuing copies - issue
- 4) order certified copy be obtained to replace illegible or unserviceable doc
- 5) submit reports to court relating to application where comes a good deal of weight

- not liable for damages unless
 - act or omission was mala fide
 - registrar or official did not exercise reasonable care & diligence

Registration Process

Day 1 - lodge at lodgement counter
 Dated and scanned
 Data section printouts
 Distribution room
 Sealed & dealt out

Day 2 - deed controllers examine
 endorse deeds
 check mortgages
 raise notes

Day 3 - return to distribution room
 scanned & distributed to chief deeds controller
 provisions Act complied with
 R reject or pass initial

Day 4 - assistant registrar monitors
 R sent to delivery counter
 passed & rested out to preparation room

Days - 3 days to deal with notes otherwise R
 once note dealt with scanned & check for new interdicts

Day 6-9 conveyancer appear before registrar to execute

Day 7 after execution scanned, numbered, sealed & dated

Day 8-9 data section captured into

Day 10 any specific instructions from deed controller alluded to

Day 11-13 microfilm
delivery room

Unit 4: Deed of Transfer

1) Forms

E → sales, donation, inheritance

F → partition transfers

G → appropriation transfers

H → transfers in compliance with court orders

CC → initial ownership Development Facilitation Act

DDD → transfers in terms of Acts

2) Sections

Preparation Certificate

Preamble

Recital

Vesting clause

Property Clause

Extending Clause

Cardinal Clause

Divesting Clause

Consideration clause

Execution clause

a) Preparation certificate/Clause

- top right

- signed by conveyancers R43

b) Heading

- nature of deed of Deed of transfer

c) Preamble

- details of conveyance appearing before registrar

○ - name, id number, marital status of person giving power

- date & place of signature of POA

d) Recital (Causa)

- reason for transfer

- main: i) sale

ii) donation

iii) succession

iv) exchange

v) rectification

i) sale

- buyer & buyer's solicitor on date

- date NB witness to registration, insolvency, disability

- sale is executed pursuant to debtor's contract, & stated

ii) donation

- date will decide priority

- if after Marriage Act must be signed contract

- don't have to mention donation accepted in recital

iii) Succession

- date of testator's death
- mode of inheritance
- short explanation of why transferee is entitled
- short explanation of testamentary conditions

iv) Exchange

- etc which land is exchanged

v) Rectification

- effects right being transferred cannot use 4(1)(b)
- how error occurred & how it will be rectified

e) Vesting Clause

- his heirs, executors, administrators or assigns or natural person
- his successors in title or assigns - companies, co, statutory bodies
- their successors in office or assigns - trustees
- look at table for NB ones
- if land undivided shares s.23(1) can transfer
- one share if not named in equal share

- X $\frac{1}{4}$ share
- 1 $\frac{1}{8}$ share
- 2 $\frac{1}{8}$ share

together comprising a $\frac{1}{2}$ share in the following properties

- 1) $\frac{1}{2}$ share in art 55
- 2) $\frac{1}{2}$ share in art 66

[can only do this if shares same in each property
if not do separate transfers for property]

- shows fraction in lowest term
- if denominator exceeds two figures show a 6 figure decimal
- calculate to 7 figure decimal's show as 6 figure decimal
 $\frac{1}{18.0}$ but 0.055556
- cannot use both forms in same deed

F) Property Clause (Pg 28)

- info on land being transferred
- must include:

1) i) full description of land

- registered number
- relevant portion / remaining extent
- share if undivided

ii) Situation of land

- name of registrar's division
- administrative district
- Province

593(3) - can apply to change otherwise uses racial connotation

iii) extent or area of land

- hectares or square meters

G) Extending Clause R 26

- right after property clause
- purpose 2 fold

- refer to diagram or general plan

- title under which land held

- extending clause can take one of two forms

i) as a diagram or original deed

First transfer:

As will appear from general plan / annexed diagram

SG No and held by deed of transfer / grant / certificate of title No

Second transfer

First transferred / registered and still held by deed of transfer No T with diagram SG annexed thereto

0

ii) subsequent transfer's

First transferred by deed of transfer / grant No T

with diagram SG annexed thereto held by deed of transfer / grant / certificate title No

or

First registered by certificate of registered title No T

3 general plan No SG relating thereto held by

Deed of transfer No T

h) Conditional Clause

- applicable conditions to land

- registered rights, ^{- servitudes} praedial

- restrictive conditions

- rights to which land is entitled as dominant tenement

- conditions can also be endorsed against land

- cannot be condition register cannot sanction

- omit conditions are fulfilled e.g. establishment of local authority

- use exact wording from original

i) Divesting clause

- declares previous owner divested
- named as aforesaid
- estate etc
- joint estate of late ... & surviving spouse

j) Consideration Clause

- purchase price
- if transfer duty paid on higher amount use that amount

k) Execution Clause

- act of execution by appearer before registrar
- once registrar sign as witness regarded as attested & registered
- full date appears

Owner - S192

- registered owner or holder of the property including S102(k) - trustee of insolvent estate

- liquidator of company or CC

- executor of deceased estate

- legally recognised representative of minor, insane or otherwise disabled owner

- trustee/liquidator/executor/legal representative is acting within his/her legal authority

S102(b) - name of both spouses in community of property

- name of one spouse forms part of joint estate

- under S17(1) both spouses means the husband

- s.96 remedy problem of doing successive transfers
- 3 waiting until registered to do next

- if person has right to receive transfer executes a deed it "shall be deemed to have been executed by the owner of such property"

- natural person identified by name & id number or

- if id incorrect by name, id & date of birth

- if no id by name & date of birth

- if no id & date of birth under an by method approved by registrar

○ - and mental status

- cannot transfer different ^{owners} ~~prop~~ land more transfer

- if undivided share owners buy each other at all owners

- jointly transfer

Units: Supporting Documents

1) Special Power of Attorney

○ written authority to represent somebody else

- ie appear before registrar

- must give all relevant details & have

- prep clause

- attorney, notes, conveyance

- prec. bc

- more of aspect

- cause

- name of transfer

- description of property

- new registrable conditions

- execution clause

Contractual Capacity

a) married / party to civil union out of community

- both parties full contractual capacity
- no marital power

b) married / party to civil union in community

- limited contractual capacity
- one spouse cannot alienate without written consent of other
- attested by 2 witnesses

① - not required if

- death / bequest excluded marriage
- HC order
- when excluded by law
- bought with proceeds excluded

c) marriage governed by laws of foreign country

- property regime determined by law of husband's country of domicile at date of marriage

① - assisted by spouse as far as necessary

d) Marriages according to Hindu or Muslim customs

- not recognized consider unmarried

e) Customary marriage in terms of Recognition of Customary Marriages Act

- full status depending on choice

f) Customary marriages before

- case says marriage in community (umede)

g) Customary marriage entered in after commencement
in community if no AvC

h) further customary marriages after commencement
- application to court 7(6) for written contract to register
- noted as intended against property

i) Divorced person
Full contractual capacity unless caveat

j) Minor

< 7 no contractual capacity parents sign

7-18 limited contractual capacity > they & parents sign

- both parties must assist

- to attend also read

R100000 → HC order

← R1000000 Master HC

- cannot purchase for minor and estate without consent or

confirmation by Master or Court

- minor appears in description

k) Insane person

- no capacity to act

- declare mentally insane MHC appoint administrator

- only powers contained in court order

- can only alienate if

- will or other written instrument all as

- HC or Master consent

1) Partnership

- full names of partners then name of partnership
- if new partner complete transfer
- all partners sign

m) trustee in deceased estate

- morths causa trust
- land must vest in trustee first

①

n) Trustee in an insolvent estate

- provisional or sequestration order lodged with registrar
- trustee transfers property
- provisional trustee does not have power of Master court
- sale in insolvency ranked higher than sale in execution
- joint estates sequestrated

o) liquidator of company or CC

① can be wound up by court order or voluntarily

- orders send to registrar

- liquidator appointed by Certificate

- contractual capacity is subject to:

- authority granted by resolution of creditors or instructions from Master if liquidated by court

- authority granted by meeting of creditors if voluntarily liquidated by creditors

- authority granted by meeting if voluntarily liquidated by meeting

- provisional liquidator's powers restricted by Master

2. Transfer duty receipt or exemption certificate

- base payable Transfer Duty Act
- consideration or value when land is acquired
- paid by purchaser on sliding scale
- junior persons fixed rate
- if electronic tax verification allowed
- certificate only by receiver stamp & Sign
- if VAT payable tax exempt

3 Rates clearance certificate

- Local Govt. Municipal Systems Act S11.8
- prescribed certificate
- valid for 90 days & certify all amounts due have been paid for the 2 years preceding
- rates takes preference to bond

4 Consents

- in terms of pre-emptive rights
- in terms of reversionary rights
- in terms of statutory provisions
 - subdivision of Agricultural land
 - s.11 (4) of Advertising on Roads & Ribbon Development
 - 95m from road beside urban areas
 - Agricultural Holding (Transvaal) Registration Act
 - S15 Matrimonial Property Act
 - Further education & Training Colleges Act
 - S56 of Deeds Registries Act (local bond)
 - Exceptional cases of insolvency
- consents must be clear & unambiguously drawn
- date & place of execution
- full descriptive details

5) Insolvency & Solvency Affidavits

- sequestration voted against vote
- rehabilitated after 10 years
- order voted against all similar votes as orders not normally specific

6) Supporting documents kept on file

- marital status affidavit
- personal affidavit
- fire affidavit
- transfer duty declarations

Unit 6: Special transfers

1) Estate transfers

- use Form E but operate clauses except
- executor is someone who is
 - authorized to Act by LOC granted by Master
 - authorized by endorsement of appointment of assumed executor
 - any representative of a deceased owner recognised by law
 - S.18(3), Reg 4(6)
- Preamble disclose name of executor, place & date of issue of LOC
- Different options
 - a) bond does not form part of joint estate
 - executor signs
 - b) bond that forms part of joint estate
 - surviving spouse joined in personal capacity
 - exceptions: only deal with share of deceased
 - sold to pay debts of joint estate
 - missing & spouse admitted
 - removal of surviving spouse
 - spouse signs as executor

- estates normally exempt from transfer duty
- in passing pay on assets of survivor
- if sold during deceased lifetime the recital must state that
- causa important
 - inside
 - outside
 - S. 38 (decedent)
 - S. 31(b) insolvent sale
 - sale during lifetime
 - donee
 - sale by executor
 - S. 14(3) transfer
 - black estates

- prior 27 April 1994 Black Administration Act
 - 27 April 1994 - 15 October 2004 Intestate Succession Act
 - after October 2004 Administration of Estates Act

- Causa should include following

- date of death
- way in which land devolves inside
- short explanation why the inheritance devolves on transferee
- short explanation how testamentary conditions are complied with
- transfer from a married estate
- ~~conditional clause~~ - registrable conditions

- Conditional Clause will be any new conditions

- Divesting clause divest estate or joint estate

2) Partition transfer

- divide co-owned land b/w the co-owners in such a way that each receives demarcated piece
- if land owned by more than one person it is co-owned
 - undivided shares
 - get own demarcated part but whole land
- agree in terms of S2(1) of Transfer of Land Act
- land is surveyed & new diagram approved
- by difference b/w subdivision & partitioning

①

a) Subdivision

- land is split into different parts
- some people owner of each part
- can apply for new title

b) Partition

- land divided b/w co-owners
- each party gets definite part of demarcated land

②

- Form F used

- Supporting docs

- partition agreement or court order

- land being partitioned

- shares registered in owners name

- land allocated to each owner

- conditions needed

- consideration paid

- conditions of land cannot be affected - national deeds used

- bondholders case

- partition diagram

- clearance certificate

- case set by spouse

3) expropriation transfer

- State acquires land without consent of owner
- notice of expropriation served by expropriation authority
- on certain date they will become owner & registered owner will receive a consideration in return

- but not payable

- Requirements

- land must be authorized by law

- State, public or local authority, corporate body, or

association of persons may appropriate

- owner notified in writing of the expropriation

- date of effect of expropriation must have already passed

- Registrar furnished with certified copy of notice of expropriation

3 expropriation plans

- registered as interdict

~~ownership~~

- ownership vests in State before registration of deed of transfer

- happens on date in notice & registration by DO is ready

confirmations of an existing fact

- Supporting

4) Transfer by way of Court order

- apply to court if cannot get transfer through successful transactions

- buyer & payor still unwilling to state

- buyer cannot be traced

- prescription

- ownership vests from day of court order

- new owner cannot do anything until have title to property

- former owner cannot do anything either

- notify registrar 7 days before application. served valid

5) Deeds of Grant

- ownership of unencumbered or acquired state land is transferred
- State is a tier
- ^{unencumbered} diagram annexed as never been previously registered
- acquired - land registered but then transferred to State
- Requirements
 - no prep clause so prove everything
 - right of State reserved
 - no divesting clause

①

Unit 7: Transfer by virtue of endorsement

1) Section 16: Acquisition of land by State or local authority

- acquire all the land under an Deed
- apply to DO for S16 endorsement
- Endorsement can only occur if Title Deed lodged
- Must be in terms of law
- Applicant is State or local authority

②

- Application:

- describe property
- state name of registered owner
- encumbered or acquired land
- consent
- Expropriation transfer
 - title deed not be lodged for endorsement
 - S31(6) applies to bonds, bonds or registry copy, endorsed
 - No TDR
 - Municipal rates yes

- Transfer by endorsement
- title deed lodged
- sworn affidavit by owner authorising same
- disposal of hypothecate title
- all other clearances

- Once endorsed State can dispose of same

2) Section 21(2) : Dissolution of a firm or partnership

- endorsement that now belongs to individuals
- dissolution can occur
 - a) agreement
 - b) death
 - c) expiry of agreed duration of partnership
 - d) insolvency
 - e) court order

- if property not allocated to all deed of transfer used

- application by all partners
 - name, id, marital status
 - shareholding
 - reason for dissolution
 - description of property
- bond must be disposed of

3) Section 25(3) : establishing the identity of children

- if held in trust for children
- can identify children
- application setting out all details
- children can deal with property when minors

4) Section 58(2): reversion of property to an insolvent

- if vests in curator/trustee the Insolvency Act
- if rehabilitated cannot deal with same until entry on deed
- court can declare that property acquired during insolvency, as belonging to insolvent not trustee
- sequestration orders automatically lapse after 10 years
- can deal with same afterwards without doing anything else
- rehabilitation orders must be filed 3 roid

① - rehabilitated person cannot deal with property until it re-vests
- application by trustee

5) Section 45: transfer by endorsement if a spouse dies

- Sec 45(1) joint estate

- endorsed so survivor could deal with same

- other circumstances used

a) after marriage in community

- surviving spouse applies for new spouse

b) A partnership

c) A marriage governed by foreign law

- if matrimonial property is iop

- surviving spouse or executor does application

- application must set out causa

- must prove marriage if necessary

b) Section 45 bis (1)(4): endorsement where parties are divorced

- legally acquired under divorce order

- only for iop

- applicant is person entitled to deal

- must be causa: all other moment sections

- 7) Section 43 bis (i)(b); court order during subsistence of marriage
- only applies if marriage still subsists
 - court ordering change to marital regime (to S20 or 21(i))
 - application by person entitled to sue

- 8) Section 43 bis (1A)(a) or (b); vesting in both of the former spouses
- both spouses after divorce or marital regime change
 - so either undivided shares
 - application by both spouses

- in fo to include
- reason for endorsement
 - divorce agreement or
 - redistribution agreement or
 - matrimonial regime
 - full names, id, marital status
 - full prop
 - place & date of signing
 - full property

○ Unit 8: Substituted Title/Certificate of Registered Title

1) Procedure for issuing certificate of registered title

- S37 general procedure

- written application accompanied with title deed
- all registered bonds lodged, consents not required
- endorse certificate, deeds & bonds
- certificate of registered title replace title deed

- different types of certificates

- S34(1) get certificate of title for undivided share
can then deal with your share

- S34(2) when co-owners joint title deed is lost

- S35 if hold various shares in various properties
can show consolidation

- S36 if hold more than one property on title deed
can apply to split

- S38 when original is DO copy lost

- S39(1) correct error in registration

- S43 land held by virtue of a township title

2) Section 34(1): undivided share

- certificate of title for their undivided share

- cannot transfer, hypothecate without it

- no new conditions created

- no TDR or rates decrease

3) Section 34(2): lost or destroyed deed

- apply for your registered deed not whole deed

4) Section 35: certificate of registered title of aggregate shares

- one title deed for all shares in properties

- e.g. 1/4cs 1/2 share or 3 title consolidate

- joint owners can apply but only in shareholding equal

5) Section 36: one or more properties held under one deed

- one piece must continue to be held by original title deed

- get separate title for each lot

- 6) Section 38: taking the place of a lost or destroyed deed
- client's copy & deeds registry copy being lost or destroyed
 - have to notify all interested parties first
 - draft deed open for inspection for 6 weeks
 - if ^{no} objections apply within 1 month of 6 weeks

- 7) Section 39(1): to correct an error in registration
- by error same land registered to different people
 - must do rectification transfer first

- 8) apply to consolidate deeds
- certificate of registered title supercedes both holding titles

- 8) Section 39(2): to omit conditions that are no longer applicable
- conditions that have lapsed or been cancelled
 - can only be applied by owner of defined land
 - cannot be applied for share in land

- 9) Section 43: Part of a piece of land

- want to mortgage specific part of land
- owner & township or settlement wants to deal with individual lot
- roads, public places remain on existing deed
- division of property into two
- conditional clause
- Notarial deed
- registration of new servitude
- cannot register servitude if owner of both lands
- Servitude
- New condition
- consent to subdivide
- Title Conditions

10) Section 18: Certificate of registered State title

- land never registered

- identical to general plan or diagram approved

3

11) Section 40: Certificate of consolidated title

- consolidates adjacent pieces of land

- must belong to same person

1) Prerequisites:

a) Common boundary

b) Owners

- undivided shares of the same size

c) Consolidation diagram

- diagram prepared

- approved by Surveyor-General

- consolidation diagram

d) Requirements for certificate

- if another person holds real right over land must:

i) diagram showing portion with real right attached to

ii) diagram reflecting portion covered produced

iii) dotted line indicates right

e) Recording

- land must be recorded in same property register

- cannot be different townships

f) Administrative district

- land must be in same administrative district

g) Process of consolidation

- cannot be consolidated directly from township title

2) Prescribed Form

- form A

- descriptive of area

- land & title deeds

- raw diagrams

- all conditions brought forward

- Notarial deeds / rights qualified

- quotations may be restricted to particular parts

12) Section 46 (4): Certificate of township title

- if township laid out on piece of land already registered

- must first issue certificate unless township makes use of the whole land

Unit 9: Types of Mortgage Bonds

1) Mortgage Bond

- method by which a creditor secures repayment of a debt by the debtor

- personal right to payment converted to real right

- registered over land & cannot deal with land

- real security right enforceable against third parties

- preferential claim if insolvent

a) Requirements

- agreement to create a debt which is not contra bonos mores

- must be immovable property capable of being mortgaged

- must be deed registered in deeds registry

b) Structure of bond

- structure emerged over years

- prepared by conveyancer

- clearly identifies parties, cause of debt, property

i) Heading

- normally Mortgage bond but will change

ii) Preamble Clause

- signed by conveyancer

iii) Preamble

- noc of conveyancer appears at deeds office

- date & place of signing SPA

① - description of mortgagor

iv) Acknowledgement Clause

- Mortgagor acknowledges that he owes money &

- give reason for debt

v) Mortgagee (bondholder)

- the creditor

- described fully

- different debts cannot be secured under one bond

- cannot register in favour of 2 people if ranking difficult

vi) Amount

- Act does not state that it must be disclosed

- in practice always done

- Do fee payable in grat

- future debts can be secured

- can express amount in foreign currency

- certificate from commercial bank reflecting exchange rate

and day of registration must be produced

- state full amount then separate if 2 mortgagees

vii) Cause of debt or causa of bond

- it is to ~~secure~~ provide security for debt
- if no claim for debt, no bond

viii) Waiver of legal exceptions

- certain defences from Roman law
- place burden of proof on mortgagee to disprove
- not compatible with ^{any} afterpay transactions

ix) Non causa debiti

- debt has no cause
- relevant if securing payment of goods sold is delayed

x) Non numeratae pecuniae

- covers debtor signed acknowledgment of debt but may not pay
- mortgagee must prove if defence waived

xi) Revisum et accensum, errore calculi & no value received

- if foreclose upto mortgagee to disprove claim raised

xii) De duobus vel pluribus reis debendi

- where people bound as co-principal debtors
- jointly & severally liable if waived

xiii) Beneficium ordinis seu excussionis

- normally has to proceed against debtor before ^{surety} ~~security~~
- can now proceed against surety first

xiv) Beneficium divisionis

- surety held jointly & severally

xv) Interest's repayment clause

- no statutory requirement to state
- NCA limits
- repayment depends on agreement

xvi) Cost Clause

- secures payment of any costs & expenses creditor incurs
- cost clause covers interest, rates, legal costs, insurance
- only kicks in if fail to pay
- preference over unsecured claims
- normally 20%

xvii) Ranking

- do not require
- ranked in accordance with registration date
- that which is earlier in time ranks higher in law
- can have ranking in bond
- registered charge first ranking & must be reformed
- S 20 Attachment must be mentioned

xviii) Property & security clauses

- immovable property
- also includes usufructs (real right)
- each property in separate paragraphs

xix) Special conditions of title

must be set out in bond

- general conditions: stayed to the conditions of title
- restriction of mortgages, alienation or disposal
- lodged consent by duly identified persons

- lease - huur gaat voor koop
- reversionary rights
 - reverts to a person on a condition happening
 - can be made subject to that condition
 - holder can assign to registrant
 - holder can waive preference
 - holder can jointly bind
- personal servitudes = other real rights
 - made subject to condition
 - holder waive right
 - jointly bind
 - stand surety

- fideicommissum
- expropriation
- restriction against separate alienation of properties
- Attachments
- Conditions

- not illegal or dishonest conditions
- certain prohibited

- register in favor of 2 people in case bond different rankings
- any duty not sanctioned by law
- bind immovable & movable
- liquor conditions
- pactum commissarium - mortgage keeps property
- cannot pay before a certain time
- sold without legal reserve - parate execute

xv) domicilium citandi et executandi

xvii) execution clause

- executed presence of registrar
- effect when signed

- can affix signature when omission noted
- not time if mort then are mortgage bond vs rat's

xvii) Special power of Attorney

- properly executed, witnessed & dated power of attorney
- include draft bond fully initialed
- alterations initialed

2) Collateral bond

- ⊙ additional bond for debt for which security already provided
- debt already secured - principal bond

3) Surety bond

- general security bond
- secure debt already secured by a registered bond or not registered bond
- secure debt already secured by " " " " "
- must renounce beneficium ordinis seu excussionis

⊙ 4) Covering bond

- special mortgage securing a future debt
- expressly declare future debt, maximum amount

5) Rebentive bond

- capacity authorized by articles of association
- create 3 issue secure debentures

6) Kinder bewijs mortgage bond

- surviving spouse gets child share if bond registered

7) Substituted bond

- present bond substituted
- sec papers involved

8) Judicial mortgage

- attachment order
- warrant of attachment issued & served

9) Kustingsbrief

- to secure purchase price
- registered in favor of seller
- requirements:
 - registered simul to transfer
 - secure value of purchase price
 - first bond → can be anyone who advanced money
 - registered over property sold

10) Sectional mortgage bond

- sectional titles units, exclusive use, common property, real rights

11) Perhapachin mortgage bonds

- Collective Investment Schemes Control Act
- part of an investment scheme
- members invited to invest where your money is lent out
- requirements:
 - nominee company registered company
 - cover immovable in favor of nominee company
 - debt owing to scheme members
 - creditors ^{NB}
 - nominee control transfer, code of conduct

Unit 10: Cancellations, releases, cessations, Substitutions & variations

1) Cancellation of mortgage bond

- cannot transfer until bond cancelled (S56(1))

- when it does not have to be cancelled:

- court order

- trustee insolvent estate

- liquidator which is unable to pay debts on winding up

① - executor distributing insolvent estate under S34

- Act

- if registered in names more parties case set only not Mustang

2) Releases from mortgage bond

- happens when more than one piece of land bonded

- if land left is enough security mortgage can cease

- can also release person if more than one

- release is required when

① a) more than one property but only one mortgage

b) more than one mortgage & several properties on the consent of co-mortgagors but only if there is land

& mortgage left after release

c) cannot release if also collateral mortgage bond as release will impact on collateral bond security

d) cannot if one mortgage and one property as then conditions

- if land subdivided release must take ~~the~~^{the} as issue of certificate of registered title

3) Cession of registered mortgage bond's condition of cession agreement where rights are transferred from holder (cedent) to another (cessionary)

- mortgagee would be cedent

- out and out cession vs cession as security

cedent follows
cessionary new owner

cedent still live
cessionary cannot code further

a) out and out cession

- out and out for value received

- cessionary is new creditor

- new owner cannot demand payment from cedent if mortgagee refuses or cannot pay

- "with recourse against" allows cessionary to demand payment from cedent if mortgagee cannot pay as it creates surety

b) Cession as security

- security for repayment of a debt of mortgagee

- once debt paid cession can be cancelled

- from MM disburse

- cedent full details

- sum of mortgage bond

- amounts paid to reduce balance must be noted

- operational clause

- must be actual cession cannot use "cessed to cession"
but must "hereby code"

- if estate to fiduciary will conditions included

- causa for cession

- must disclose otherwise no cession

- cessionary

- full details

- bond must be ceded as whole unless consent by mortgagee that it is split.

- General

- if you need to cede both mortgages & cession jointly consent
- can sign cession before bond registered
- cannot ~~cede~~ cede collateral bond
- if cede out is out instead of surty must cede back & start again
- out can only be ceded by court order if no consent

④ Substitution of Debtor/Mortgagee by endorsement

only thing substituted is debtor

a) Section 24 bis (3)

- transfer of ownership or dissolution of partnership
- bond cancelled or substitution of members

b) Section 43 (2)(c)

- transfer out of joint debt to surviving spouse
- bond not cancelled
- deceased share relieved from bond
- surviving spouse substituted as sole debtor

c) Section 57

- when selling land purchaser takes over bond
- must renounce all the difficult legal items
- surviving spouse becomes debtor but only if transfer by deed
- cannot happen when debtor is
- trustee in an insolvent estate
- executor of deceased estate
- liquidator of company
- if the whole land is not transferred

- if transferor reserves a real right
- if new owner not competent to mortgage
- if bond secures obligations of a surety
- two mortgages not substituted by single mortgage
- mortgagee must consent to substitution

5) Part Payment

- if part paid can be endorsed on bond to reduce
- can only be done if bond does not secure future debts
- mortgagee ~~has~~ is only person to consent
- surety bonds cannot be reduced by part payments

6) Reduction in cover

- some bonds security for present debts & covering bond for future debts up to present debt amount i.e. can take more out & repay
- reduction in cover regulated so can take at least
- only done for bond which secures future debts

7) Waiver of preference

- s.3(1)(i) waiver of real rights
- can be done for bonds registered & to be registered
- waived in favor of attorney & title holder if necessary
- e.g. usufructs, habitations, usus, right of usufruct, fiduciary
- mortgage bonds rank in order of date of execution
- can be waived in favor of existing or new bond
- new bond will have preferred position if debtor cannot meet req
- waiver contained in notarial deed
- waiver in notarial deed prepared by conveyancer, notary or attorney
- consent in bond by conveyancer only
- if more than one mortgagee both consent

- if two bonds purport to rank pari passu, no waiver as long as ranking clause clear

8) Section 3(1)(b) agreements varying terms of bond

- registrar duty to register any agreement varying bond

- following may not be varied

a) conditions relating to cause of debt

b) conditions relating to mortgaged security

c) conditions relating to amount of debt secured

- part payment or reduction of capital must be done

d) conditions relating to any additional amounts (costs clause)

e) covering bond condition deleted

- cannot change character of bond, new bond registered

- can vary not rectified or amended 4(1)(b) fixes

- can amend

a) acknowledgment of debt

b) rate & payment of interest

c) method & time of repayment of capital

d) domicile clause

Unit 11: Sequence of deeds & miscellaneous applications

1) Significance of Section 14

- S14 read with S16 cornerstone of land registration

- ownership & real rights registered by deed or endorsement

- must happen each time

- S14 comprehensive deeds registry record

- protecting ownership

a) general rule

- 1) transferor's real rights must follow the sequence of the successive transactions in pursuance of which they accrued
- 2) if by testamentary disposition or intestate follow sequence in which right to ownership accrued successively
- 3) it is unlawful to depart from any such sequence

- does not limit existing methods simply says follow sequence
- does not matter how many transactions must follow order

b) Exceptions to Section 14

1) Section 14(1)(b)(i)

- if land devolves on descendant can go directly to descendant heirs - b intestate provided that

- all three must be met
- a) land devolved in terms of will or intestate
 - b) descendant died minor's intestate before deceased
 - c) no executor app in intestate estate of minor

2) Section 14(1)(b)(ii)

- executor can transfer directly to purchaser if

3) Section 14(1)(b)(iii)

- if redistribution agreed
- transfer in terms thereof will

- must reflect in L3 D

Section 14(1)(b)(iv)
redistribution not possible if after L3 D

4) Section 14(1)(b)(v)

- 14(1)(iii) will apply mutatis mutandis

a) redistribution of joint estate has divorced or judicially separated
- can go directly into single name does not have to go into joint estate first

b) assets of partnership redistributed on dissolution
- transfer from partnership to one partner
- don't have to first do to all partners

5) Section 14(1)(b)(iv)

- if fiduciary interest expires before transfer it can go directly to fideicommissary
- also happens if right is repudiated

b) Section 14(1)(b)(vii)

- if claim vest in 3rd person due to judgment or court order or sale in execution goes directly to 3rd person

7) Section 33(1)

- it has right to transfer but cannot procure transfer
in normal way can get court order
X sells to Y who sells to Q and Y vanishes

8) Section 92(2)

if donated items of ANC cannot transfer or mortgage

9) Section 24 bis

- if shareholding in property of partnership changes

10) when a court directs otherwise

11) other exceptions in other Acts

3) Transfer Duty on intermediary transfers

- in successive transfers transfer duty lodged for each one

- so must pay transfer duty on a transfer that does not have to take place

4) Diverse applications & amendments

a) amendment of error s. 1(1)(b)

⊙ - errors can be amended if error on date of registration

- errors that can be amended:

1) persons name

2) description of person ^{id} _{registration} ^{id} _{market status}

3) name of property ^{spouse} _{spelling error}

4) description of property - location

5) conditions affecting such a property

- must not be in contravention of another Act

- must not render bond invalid

- cannot amend a dead deed

- cannot change details of person who no longer has an interest

- application normally done on sworn affidavit

- cannot be done if transfers any rights

- must swear no other deeds with error otherwise fix all

- if conditions being amended not to legally reflect a deed being schedule of same

b) Section 17(4)

- if marital status changed or not reflected

- must comply

a) if person married since registration

b) if mar. established only 3 death or divorce since then

c) had former joint estate but registered in husband's name only prior to 1/11/1984

- cannot be used to

- rectify error of marriage at registration

- change marital status if misrep

- no consent required but note

- all deeds lodged ie bond

- proof of marital status lodged

- death certificate lodged

- divorce order lodged

○

c) Section 44

- if resurveyed 2 extent changes

- must also change diagrams

d) Section 68(1) - lapse of personal servitude

- difference between lapsing & cancellation

- cancellation all consents needed

- lapsing consent not needed

- building conditions don't have to be done

e) application where personal servitude lapses

- Reg 46

f) Section 93(1) : change of name of person or property

- where person or partnership changes name
- change of name must comply with s 26(1) of Birth & Death Registration Act
- except where woman
 - assures husband surname
 - resumes previous surname
 - adds maiden surname to prior surname

g)

- Sect 93(2) can apply to Minister in grounds that name offensive or has racial connotations - laid
- Minister orders SU to change
- SU notifies registrar

s) Applications in law of Estates Act, Cap 6:1 Act 3 statute

a) Section 39(2) of administration of Estates

- if usufruct to devolve on uncertain person, or
- proceeds of property devolve on certain or uncertain person
- subject to - cannot be affirmed when
 - a) Section 23(1) applies - trust to trust for unborn children
 - b) where fiduciary can take immediate transfer

b) Section 39(3) of AOE

- if cost of transfer will cause hardship
- Master authorize that executor be deed endorsed
- merely creates caveat

c) Section 40(1)(b) of AOE

- if property left to be administered by trustee
- trust must be created if beneficiaries need
- will makes provision for termination of trust

d) Section 44 & 49 of Companies Act

- if company name changes - S 44
- S 49 if liquidated & voluntary liquid manager
- register endorses "in liquidation"
- if liquidation uplifted nothing uplifted

e) conversion of CC to company - S 29C

f) change of name of CC, bank, co-operative, insurer or statutory body

- CC / 521

- bank / 556