

Summary Notes on Legal Drafting and Conveyancing

Course Outline for 1st semester

1. Introduction to Legal Drafting and Conveyancing.
2. Stages of drafting Legal Documents.
3. Drafting: Brief Writing
4. Drafting: Legislative Drafting
5. Interpretation of Statutes
6. Conveyancing
 - a. Contract Stage
 - b. Completion Stage
 - c. Searches and Investigation of Title.

Module 1

Introduction to Legal Drafting and Conveyancing

Legal Drafting:

Legal Drafting is the art of preparing and writing legal documents with clarity and Accuracy. Legal Drafting relates to the drafting of general legal documents. It is a means of communication between the lawyer (Draftsman) and the general public. The governing law depends on the subject matter of the document.

Legal Drafting is the process of creating written legal documents that accurately reflect the intentions of the parties involved while ensuring compliance with applicable laws.

Examples of legal documents are;

1. Corporate Documents
 - Memorandum of Association
 - Articles of Association
 - Shareholders Agreements
 - Partnership Agreements
 - Board Resolutions
 - Tax and Regulatory Documents
2. Litigation Documents
 - Pleadings
 - Motions
 - Affidavits

3. Statutory Documents

- Acts
- Laws
- Edicts
- Regulations

4. Testamentary Documents

- Wills
- Codicils

5. Contracts

- Sale of Goods Agreement
- Employment Contracts
- Hire Purchase Agreements
- Transfer Agreements
- Deeds
- Board Resolutions Etc

Conveyancing:

Conveyancing refers to the legal process of creating or transferring legal title in property from one person to another. Conveyancing is simply drafting legal documents for commercial purposes. Estates and interests in land are the subject of conveyancing. Conveyancing focuses on the transfer of legal title or interest. Documents drafted under conveyancing are known as Instruments of Conveyance.

Objectives:

1. Instrument of transfer or creation of legal title in property
2. Instrument to minimize future disputes in property transactions

3. A Legal tool that ensures that the rights of both the seller and the buyer in property transactions are protected.
4. A Legal Tool for the implementation of property Laws

Distinction.

Legal Drafting	Conveyancing	
Applies/Covers a broad range of legal documents	Applies to Land and Estate Transactions	

RULES OF DRAFTING

In Legal Drafting, the primary concern of the lawyer (Draftsman) is to be ACCURATE and ORDERLY in the presentation and to COMMUNICATE clearly with the Reader/Public. In other words, ensure that the words used are such that the reader must understand and that the documents prepared are readable by the public/intended audience.

In summary, Communication is key in Legal Drafting.

Guidelines in Drafting

1. Avoid Ambiguity. Don't use words that are subject to multiple interpretations.
2. Avoid Archaic words. Adopt the modern style of writing in English. Use simple words. Avoid excessive use of outdated or complex legal jargon.

3. Avoid redundant words and verbosity. Redundant words are unnecessary repetitions in a sentence. Verbose words are additional complex words that make a sentence lengthy. Aim at writing in simpler terms and straight to the point.
4. Ensure you comply with the standard organized layout in legal drafting. In writing/drafting legal documents, use precedents as a guide in order to ensure that the layout is adhered to. Precedents are not set on stone, they serve as a guide to the draftsman in ensuring the uniformity in the layout of the document.
5. Compliance with Legal requirements. Ensure that the document complies with applicable laws and regulations. Verify facts, Check Statutes and regulations. Do not rely on unverifiable information.

Stages of Drafting Legal Documents.

Drafting legal documents is a critical skill that demands precision, clarity, and foresight. Whether it's a contract, a pleading, or a corporate document, a well-drafted document can prevent disputes, protect interests, and ensure compliance with the law. Poor drafting, however, can lead to ambiguity, dispute or unintended consequences.

To ensure high-quality drafting, lawyers typically follow these six processes:

1. Understanding the purpose and Audience
2. Analysis, Classification and research
3. Planning and structuring the draft
4. Composition/Drafting

5. Editing and Proof-reading the draft.

6. Final Drafting and Execution

1. Understanding the Purpose and Audience

Before writing a single word, you must understand why the document is being drafted and for whom. A draftsman cannot act without receiving instructions from his clients. The raw material or facts received from the client form the basis upon which the proposed legal document is to be drafted.

This involves:

1. Interviewing the client. Listening and questioning the clients to extract more material facts from the client's case. (extract all necessary information). Advising the client where necessary.

2. Clarifying the purpose of the legal document.

3. Identifying the audience. Who are the readers? Lawyers and the courts. The lay-man. For instance:

- A court filing must adhere to formal rules and cite legal authorities.
- A contract should be balanced and clear to prevent disputes.

2. Analysis, Classification and Research:

This is the stage where the lawyer conducts research in the law applicable to the facts he obtained during the client's interview. This involves assessing the relevant laws, regulations, and precedents that apply to the document you are drafting. Conduct detailed research on legal principles, case law, and statutes that might impact the document. Ensure the document complies with all applicable laws and regulations. Look for any statutory requirements, mandatory clauses, or jurisdiction-specific rules.

3. Planning and structuring the draft:

Organize these components into a logical structure. This ensures the document flows smoothly and is easy to read and understand. Outline the main sections and headings of the document. This helps in organizing the content logically. Organization is key to making the document logical and easy to read. Start by outlining the structure. For most legal documents, the structure follows a predictable format.

4. Composition /Drafting.

This is the stage where the actual drafting takes place. Review templates or precedents (past documents) that can provide guidance. However, avoid blindly copying. Each document must be tailored to the specific circumstances. Here are the principles to follow:

- a. Avoid Ambiguity. Write in clear and concise language. (Avoid Jargons)
- b. Adopt the modern style of drafting
- c. Eliminate redundancy
- d. Format Properly. Use headings, subheadings, bullet points, or numbered clauses for ease of reading.
- e. Maintain consistent terminology and formatting throughout the document.
- f. Ensure all factual and legal statements are accurate and supported by evidence or legal authority.

5. Editing and Proof-reading.

No legal document is complete after the first draft. This stage ensures the document is accurate, complete, and effective.

This is a method employed by lawyers or draftsmen to ensure that the legal documents drafted are free from errors. It is done in several ways;

a. Self-Review: Review the draft to check for accuracy, completeness, and consistency. Ensure it aligns with the client's objectives and legal requirements. Proofread for grammar, punctuation, and spelling errors.

b. Peer Review: Seek the assistance of a colleague or another legal professional review the draft to provide feedback and identify any issues.

c. Client review: Share the draft with your client to confirm it reflects their intentions. Clients may request changes to better align with their needs or expectations.

6. Final Drafting and Execution:

In this stage, the draftsman incorporates all feedback to ensure the document is in a professional form and free from errors. Once all revisions are made, the document is finalized and made available. The execution of the documents depends on the purpose of the document. It may involve attestations, signatures, notarization, or filing with a court or other authority.

Drafting legal documents is a skill that takes time and practice to develop. But by following these stages and principles, you'll be well on your way to drafting effective and legally sound documents.

MODULE 2

DRAFTING: BRIEF WRITING

The Concept of Litigation Drafting or Brief Writing in Nigeria

1. Definition and Scope of Litigation Drafting or Brief Writing

Litigation drafting or Brief Writing is the process of preparing a written legal argument to be submitted to a court and the opposing parties. It involves drafting documents that present legal arguments, factual narratives, and compliance with court procedures and rules. These documents include pleadings, motions, affidavits, briefs, and other court-related paperwork. Litigation drafting applies to all documents where court filings are required. This includes civil and criminal litigation documents and extends to appeals and alternative dispute resolution (ADR) processes.

In the Nigerian legal system, litigation drafting is a critical skill for legal practitioners as it directly impacts the success of a case in court.

2. General Principles of Litigation Drafting/Brief Writing.

A. Legal Compliance:

In the Nigerian Legal System, courts operate under specific rules that govern the form and content of litigation documents. These Rules which guide procedural requirements in courts include;

- High Court (Civil Procedure) Rules of the various States of the Federation.
- Magistrates' Court Rules of the various States of the Federation.
- Court of Appeal Rules.
- National Industrial Court Rules
- Supreme Court Rules
- Rules of Special courts and Tribunals

In addition to compliance with procedural requirements, applicable statutes, legal authorities, citations and facts adduced must be accurate.

B. Drafting Compliance

- Use simple and concise language to ensure the document is unambiguous.
- Avoid redundant words and verbosity.
- Avoid Archaic words
- Present facts and arguments in a logical sequence.
- Use precedents to ensure compliance with jurisdictional requirements in the structure and layout of the document.
- Litigation documents must be signed appropriately.

3. Key Litigation Documents in Nigeria

In the Nigerian Legal System, there are three main litigation documents that are used by courts. (pleadings, Motions and Affidavits). Each litigation document plays a distinct role and serves a distinct purpose in litigation practice in Nigeria. We would examine these documents.

1. Pleadings:

Pleadings are formal written statements written by parties in a suit. Pleadings are documents that outline the issues which the parties have brought before the court for determination. They present the narrative of the parties, whether as a claim, counterclaim, or defence, thereby enabling the judge and opposing parties to comprehend the foundation of the case.

Types of Pleadings in Nigeria:

- a. Originating Processes: Documents that initiate legal action (e.g., Writ of Summons, Originating Summons, Petition).

B. Writ of Summons:

This document initiates a civil lawsuit and notifies the defendant of the claim against them. It is issued by the claimant or the plaintiff (as the case may be) and directs the defendant to appear and defend the case. A writ of summons is usually accompanied by a Statement of Claim (a comprehensive document that outlines the case of the plaintiff or claimant, the facts relied on and also includes the reliefs that the claimant or the plaintiff seeks). A Witness Written Deposition (This is an affidavit document wherein the plaintiff's witness deposes to facts and states his story in support of the plaintiff's claim). The Plaintiff's List of Witness and The plaintiff's list of documents to be relied on.

C. Statement of Defence:

This is a document drafted and filed by the opposing party in response to the Statement of Claim. This document denies, admits or explains the facts alleged by the plaintiff/Claimant. A statement of Defence is usually accompanied by A Witness Written deposition (This is an affidavit document wherein the defendant's

witness(es) deposes to facts and states his story in support of the defendant's claim). The Defendant's List of Witness(es) and The defendant's list of document(s) to be relied on.

D. Reply:

This is a document filed by the Plaintiff/Claimant in response to any new issue raised by the defendant in the Statement of Defence. A reply is optional. It is drafted by the plaintiff/Claimant only where new issues are raised by the defendant in the Statement of defence.

Drafting Guides in Pleadings:

- Pleadings must be clear and concise
- Compliance with the modern style of drafting
- In drafting pleadings, avoiding legal arguments. Pleadings should contain material facts and exclude evidence. (*Shell Petroleum Dev. Co. Ltd v. Otoko*).
- The format of pleadings must comply with the applicable court rules.

2. Motions and Applications:

A motion is a formal request made to the court praying for specific orders or reliefs during litigation. Motions are interlocutory pleadings ie. They are applicable during the pendency of a lawsuit. Motions and applications are formal requests made to the court for specific orders or reliefs during litigation. They operate to resolve procedural matters or seek immediate or ancillary reliefs and address issues that may arise before the substantive case is determined.

Types:

a. Motion on Notice:

This is a motion filed by a party to a suit, filed in court and served on the opposing party, giving them time to respond to the prayers made before the court can hear the application.

B. Ex Parte Motion:

This means "a motion made without notice to the other party." It refers to a legal application brought before the court by one party without informing or involving the opposing party, usually in situations requiring urgent or immediate action, particularly where the subject matter of a suit is at risk of damage.

3. Affidavits:

An affidavit is a formal written statement made under oath or affirmation. It's a sworn testimony reduced and presented in writing. An affidavit can be used as evidence in legal proceedings or to state the existence of facts.

Key Characteristics:

- Affidavit is in written form.
- An affidavit is based on the deponent's personal knowledge and thus is written in the first person (I).
- An affidavit is a sworn testimony and the oath is administered by a Person authorized to do so, such as a notary public, commissioner for oaths, or a judge, who must include his signature or stamp.
- An affidavit must be signed by the deponent.

- An affidavit typically follows a specific format. The Use of precedents is advised. The formal nature and the requirement of an oath or affirmation of an affidavit makes it crucial for ensuring the truthfulness and reliability of evidence presented before the court. Must be factual and free from legal arguments, opinions, or conclusions.
- Must comply with the Oaths Act and other relevant procedural rules.
- The information contained in an affidavit must be accurate and truthful. Making false statements in an affidavit can have serious legal consequences, including charges of perjury.

Affidavits serve different purposes in legal proceedings:

- Evidence in Court: They can be used as evidence in court hearings, trials, and other legal proceedings. They can be used to support motions, applications, or other legal arguments. An example, Affidavits are used to support the claims made in pleadings.
- Supporting Applications: They are often required to support applications for various court orders, such as injunctions, search warrants, or other forms of relief.
- Proof of Service: An affidavit of service is used to prove that legal documents have been properly served on a party.
- Affirmation of facts: Affidavits are used to state the existence or to affirm to the existence of facts. An example, an affidavit of facts to state facts as to declaration of age.

4. Briefs of Argument:

Briefs are written submissions containing legal arguments and authorities relied upon by the parties. They are commonly used in appellate courts.

5. Other Documents:

- Subpoenas- A subpoena is a legal document issued by a court or other authorized body that compels an individual to:
 - Testify at a hearing or trial: This is known as a *subpoena ad testificandum* (to testify).
 - Produce documents or other tangible evidence: This is known as a *subpoena duces tecum* (to bring with you).
- Written Addresses.
- Notice of Appeal and Grounds of Appeal.
- Writ of habeas corpus- a legal remedy that protects an individual's fundamental right to liberty by ensuring they are not unlawfully detained or imprisoned. It serves as a safeguard against arbitrary or illegal detention by compelling the detaining authority to bring the person in custody before a court to justify the legality of their detention.
- A Writ of Fieri Facias, often shortened to Writ of Fi.Fa. (pronounced "fy-fa"), is a legal document used to enforce a money judgment. It's essentially a court order instructing a law enforcement officer, typically a sheriff or bailiff, to seize and sell the assets of a judgment debtor (the person who owes the money) to satisfy the debt owed to the judgment creditor (the person who is owed the money). The primary purpose of a Writ of Fi. Fa. is to enable a judgment creditor to recover the money they are owed after obtaining a court judgment.

- A Mareva injunction, also known as a freezing order or asset preservation order, is a court order that prevents a defendant from disposing of or dissipating their assets while a legal case is ongoing. It's a powerful tool used to ensure that if a plaintiff wins their case and is awarded damages, the defendant will have the means to pay.

Sample Case:

Mr. Abbott seeks to recover a debt of N5,000,000 from Mr Wakefield whom he lent said money to on 1st September, 2024 and has refused to pay despite repeated demands.

Documents to Draft:

1. Writ of Summons:

- Include the names of the parties, the court's jurisdiction, and the relief sought.

2. Statement of Claim:

- Outline the facts of the case, the agreement leading to the debt, and the defendant's refusal to pay.
- Attach the supporting documents

MODULE 3
DRAFTING: LEGISLATIVE DRAFTING

Sample Legislation:

- 1. The Nigerian Data Protection Act 2023. Signed into Law on the 12th day of June, 2023.**
- 2. The Electricity Act 2023. Signed into Law on the 8th day of June 2023.**
- 3. The Anambra State Homeland Security Law 2025. Signed into Law on 18th January, 2025**

Legislative drafting is the process by which policies or proposals are put in a legislative language called “The Bill” ready for presentation to the legislative house for passage into an “Act” or a “Law” as the case may be. Legislative Drafting is the process of preparing and writing Laws, Bills, and other statutory instruments.

Legislative Drafting



Drafting Process Legislative Process

The Drafting process begins with the receipt of instructions to draft a bill and ends with the presentation of the Bill to the House. The Legislative Process, on the other hand, comprises of the various stages a Bill undergoes; the first reading, the second reading, the Debate, The Committee hearings, The Public hearings, The Third Reading, Passage into Law and Assent by the president or Governor (as the case may be).

The Process of Legislative Drafting.

1. Policy Formulation:

The process begins with identifying a need for legislation, often proposed by the executive branch, a legislative committee, or civil society. The Draftsman must fully understand the instructions he is given by the sponsors of the Bill. Traditionally, a checklist is used when taking the draftsman's instructions. A number of guidelines include;

a. Background Information:

A Legislation is the end product of an idea formed. The draftsman is expected to obtain the background history, the facts and the problem the Bill seeks to remedy.

b. The essence/the object of the proposed Law:

A proposed Law must have a clearly defined purpose. Knowledge of the purpose of the Bill assists the draftsman in drafting; the long title, the preamble, and the purpose clause of the Bill.

c. Anticipated Challenges:

In Legislative Drafting, the draftsman must know the challenges associated with a proposed Bill. Such issues must be considered before and while drafting a Bill.

d. Existing Laws:

Research into the existing Laws on a particular subject area assists the draftsman in avoiding duplicity or the implied repeal of an existing Law.

e. Practicability:

Analysis of received instructions involves ascertaining the practicability of the proposed Bill. A law that cannot be implemented is no law. Issues to be considered in ascertaining the practicability of a Law include;

I. The danger of a proposed Law declared unconstitutional

- ii. A state enacting a Law on an item on the exclusive list.
- iii. The socio-cultural attributes of the people for whom the proposed Law is intended.

2. Stakeholder Engagement:

Stakeholder engagement is an important step in the legislative drafting process in Nigeria. Stakeholder engagement refers to the process of consulting with individuals, groups, and organizations that have an interest in or may be affected by a proposed legislation. Examples of stakeholders include Civil Society Organisations (CSOs), Non-Governmental Organizations (NGOs), private sector representatives, traditional institutions, The Judiciary, The Academia, and the general public.

Stakeholder engagement in legislative drafting ensures inclusiveness by representing marginalized groups, refining policy objectives with practical insights, and preventing conflicts through early engagement.

They improve enforceability by addressing implementation challenges and aligning legislation with international standards.

3. Draft Preparation and Composition:

In planning a draft, the use of precedents is advised. Generally, the appropriate structure or layout should be the conventional structure used in the jurisdiction in question. A bill should be organised and structured in a way that enables readers to assess the information they seek as easily as possible. The rules of modern drafting are applied in the composition of a Bill.

Generally, a Bill is arranged as follows;

Part I: Preliminary Matters (Long title, preamble, short title etc)

Part II: Principal matters (Substantive and Administrative Provisions)

Part III: Miscellaneous matters (Offences, Penalties etc)

Part IV: Final Matters (Repeal, Schedule etc)

4. Editing and Proof Reading:

Here, the proposed Law is edited to correct mistakes and ensure that the real intention of the draftsman is conveyed to the readers.

It is done in several ways;

a. Self-Review: Review the draft to check for accuracy, completeness, and consistency. Ensure it aligns with the client's objectives and legal requirements. Proofread for grammar, punctuation, and spelling errors.

b. Peer Review: Seek the assistance of a colleague or another legal professional review the draft to provide feedback and identify any issues.

In a draft, the use of precedents is advised. The complete draft is presented to the legislature (National Assembly or State House of Assembly), where it undergoes readings, debates, amendments etc.

Components of a Bill

A Bill consists of different components with each part playing a unique role or function. A bill is divided into;

Part I: Preliminary Part (Long title, preamble, short title etc)

Part II: Principal Part (Substantive and Administrative Provisions)

Part III: Miscellaneous Part (Offences, Penalties etc)

Part IV: Final Part (Repeal, Schedule etc)

- **Part 1: Preliminary Part:**

The preliminary provisions of a bill is the first part of a bill which introduces the reader to the Bill and states the purpose, objective, title etc of the Bill. The preliminary provisions of a Bill consist of;

a. The Long Title: The Long title provides for the general purpose of a Legislation. The long title is useful in determining the scope and in the interpretation of ambiguous provisions of the legislation. The long title of a Bill is divided into three parts;

- The introductory part which states whether it's an Act or a Law.
- The Function part which states the purpose of the Bill
- The closing part which includes whether the Bill seeks to repeal or to amend.

b. The Preamble: The purpose of a preamble is to state the reason(s) for a Bill. Generally, preambles are not regarded as part of a Bill but can be resorted to in interpreting a Bill.

Currently, preambles are less popular in drafting Bills because Bills now have explanatory notes attached to it. An explanatory note of a Bill defines the

purpose and the reason for the Bill. Explanatory Notes can be at the beginning or at the end of a legislation.

c. Enacting Clause: The enacting clause gives information about the enacting or the constitutionally empowered authority to enact the Law or Legislation. The enacting clause is a compulsory component of a Bill and provides evidence of its legislative statutory nature. The enacting clause introduces the main body of the Bill. The wording of the enacting Clause is dependent on the enacting authority.

d. The purpose or object clause:

The object clause outlines the purpose and the goal of a Bill. The object clause aids the reader in understanding the very essence of the Bill and can be used as a guide to interpreting the ambiguities contained in the provisions of the Bill.

e. The short title/citation:

The short title of a Bill is the name by which a Bill is known or cited. The purpose of the short title is to identify and cite the Bill. It is meant for reference purposes only. The short title usually comes at the end of a Bill. The short title contains the following;

- The name of the Bill
- The year in which it was passed.
- Its number among the Acts or Laws passed in that year.

- The nature of the Bill; whether it's an amendment, a consolidation or a repealing Bill (Note that this is optional).
- f. Commencement: The commencement part of a Bill states when the Bill comes into effect. Note that there is a difference between when an Act or Law is passed and when it becomes operative. The summary of S. 2 of the Interpretation Act is as follows;
- S. 2(1): A Bill is passed when the president or the Governor assents to the Bill, irrespective of when it comes into force.
- S. 2(2): Subject to the provision stating a contrary day where a Bill shall come into force, A Bill shall come into force on the day the Bill was passed.
- S. 2(3): Where an enactment is expressed to come into force on a particular day, it is deemed to come into force at the immediate expiration of the previous day.
- g. Application: The Application provision of an enactment outlines the particular subject matter or sections of the general public the enactment is limited to. Where an enactment does not contain a provision on application, it is deemed to apply to the general public within the jurisdiction of the enactment.
- h. Definitions/interpretation: Definitions can be defined as a statement of the exact meaning of a word. In defining words used in a Bill, the definitions used in the Bill must be used. Definitions are employed in the drafting of enactments to achieve three purposes;
- To avoid repetition and reduce the length of the Bill
 - To state the meaning of some words used in the Bill.
 - To eliminate confusion that may result in the interpretation of words used in the Bill.

- **Part II: Principal Part**

The principal provisions are the main provisions of a Bill. They form the bulk of the content of a Bill. The intentions and the ideas of the draftsman are contained in the principal provisions. The principal provisions are divided into two;

- The Substantive Provisions: The substantive provisions are basically the rules and policies regulating conduct, the rights and duties of the affected populace as well as the limits.
- The Administrative provisions: The administrative provisions provide for the administration and the execution of the provisions of the Bill. It provides for the modalities for the execution and implementation of the laws stipulated in the Bill.

Where a Bill provides for the establishment of a statutory body, it must provide for an administrative organ responsible for the everyday management of the body. This includes; the procedure for the appointment of management officers, the tenure of offices of officers, the establishment of the various committees, the composition of the Board, the remuneration of officers, the functions of the body, preparation of annual reports, appointment of auditors etc.

- **Part III: Miscellaneous Part**

The Miscellaneous part covers a variety of matters; ancillary and supplementary; not provided for in the principal provisions. This part covers issues such as

Penalties, Offences, Power to make rules & regulations, Notices, Dispute Resolution etc

- **Part IV: Final Part**

This provision contains the concluding parts of a Bill. It contains the schedules, explanatory memorandum (where applicable) etc.

Legislative drafting, the principles thereof, are not cast in stone. Adjustments as well as variations are made depending on the circumstances of each proposed Bill, as well as its contents and purpose.

MODULE 4

CONVEYANCING

Conveyancing is the practice of effecting property transactions and contracts in general. The legal instrument or documents used for carrying out these transactions and contracts in Law are called 'The Instruments of Conveyance'. Instruments of Conveyance can be in various forms; A Deed, A Lease, A contract of Sale, A charge, A power of Attorney, A Hire-purchase contract etc.

Legal Framework.

The Laws that regulate the practice of conveyancing in Nigeria are numerous. A number of the principal legislations are as follows;

1. The Constitution: The Constitution is the grundnorm of all Laws and affects property rights in several ways. Particularly in S. 43 and S. 44.
2. The Land Use Act: This is the principal legislation that regulates land ownership and administration in Nigeria
3. The Conveyancing and Law of Property Act 1881 & 1882: This is generally referred to as 'The Conveyancing Act'. This is part of the received English Laws and is applicable in the States of the Old Eastern and Northern parts of Nigeria
4. The Property and Conveyancing Law 1959: This applies to the States within the Old Western Region of Nigeria.
5. Land Instrument Registration Laws of the various States: These are State Laws that regulate the registration of land instruments within the jurisdiction of each State. This Law provides for the procedure for the registration of Land Instruments and establishes the Land Registry Offices for each State. The Land Instrument Registration Law of the various States is concerned with registration and is unconcerned with titles of the said instrument ie The registration of an instrument does not cure any defect concerning the title of the instrument.
6. The Stamp Duties Act or Law: This is a part of tax Laws, whose primary objective is to generate revenue for the government. This Law provides for the procedure for the stamping of documents and establishes the Stamp Duties Office. Registrable instruments must be stamped within 30 days of the execution of the document. An unstamped document cannot be tendered in evidence and it cannot be accepted for registration.

7. Case Laws: Judicial decisions of superior courts of record are primary sources of Law to the development of property law and practice in Nigeria.
8. Land Use Charges Law: This Law combines all property and land-based rates and charges and are made by the States for the efficient administration of Land transactions in the State.

Stages of Conveyancing:

There are two stages of conveyancing.

1. The contract Stage: This starts with the pre-contract inquiries and ends with the formation of a binding contract for sale.
2. The completion stage: The process which involves the vesting of legal title in the purchaser using the appropriate instrument under seal. This is also known as the conveyance stage.

→ The contract stage.

This is the stage where the purchaser acquires equitable interest in the property while the legal interest is acquired after the completion or the conveyance stage. A sample conveyance is employed in this section to further explain the contract stage of conveyance: A Contract for the sale of land.

A contract for sale of land is defined in **Mojekwu & Anor. v. Adelana & ors (2014) LPELR-23617(CA)** as a contract whereby the seller agrees to transfer the title or

the property in the land to the buyer for a consideration called the price or the purchase fee.

The Court further outlines the ways in which land can be properly and rightly sold, validly acquired and legally transferred in Nigeria and they are;

- a. Customary Law
- b. English Law.

The determining factor of the system of law by which a valid sale of land has been conducted depends on the nature of the transaction and the procedure followed in making it. Secondly, the validity of a contract of sale of land depends on the basic rules of the contract i.e. the elements of a valid contract.

Contracts of sale of land in Nigeria are of three types;

a. Oral Contract: Oral Contract of sale of land is a method of acquisition of land where the requirement of writing is not necessary. This method of acquisition of land is popular under the native laws and customs and is valid only under customary law. The essentials of a valid oral contract of sale of land under native or customary law are;

- The purchase price of the land must be paid.
- The transaction must be concluded in the presence of at least two witnesses.
- The purchaser must be put into immediate possession and in the presence of the same witnesses.
- **Atanda v. Hon. Commissioner for Lands and Housing, Kwara State & Anor (2017) LPELR-42346 (SC)**
- **Ajai v. Jolaosho (2004) 2 NWLR Pt. 856. P.89**

b. Open Contract: An open contract for sale of land is a contract that only specifies the minimum requirements of the **Statute of Frauds 1677**; The parties, The property, The price and The signature. The contract is open because it leaves most of its terms to be implied by Law.

The most common form of executing an open contract is the issuance of a purchase receipt.

The Court in **Royal Exchange Assurance Nig. Plc. v. Onibgogi & Ors (2014) LPELR-22645 (CA)** states that it is an established principle of law that in an agreement for the sale of land by any mode of sale, a purchase receipt is evidence that there was an agreement for the sale of land and that the consideration for sale was paid by the purchaser. It is the payment of purchase price by a party that automatically confers a right on the party which right is enforceable unless otherwise determined.

c. Formal Contract: A formal contract is a contract for sale of land which in addition to the minimum requirements of the **Statute of Frauds 1677** (parties, property, price, signature) provides for some conditions of sale as may be agreed to by the parties. A formal contract of sale of land is in three parts;

- The particulars of sale that describe the subject matter of the contract
- The general conditions of sale (The conditions in a contract of sale of Law which are implied by Law)
- The special conditions of sale which are drafted by the parties to suit the peculiar circumstances of the contract.

A formal contract of sale of land is drafted to suit the peculiar circumstances of each transaction.

Searches and Investigation of Title in Contracts of Sale of Land

1. Introduction Searches and investigation of titles are critical steps in the process of land transactions. These steps are conducted to ensure that the buyer acquires good and marketable title to the property and to identify any encumbrances or defects in the title. This is because it is implied in every contract of sale of land that the vendor shall convey good title to the purchaser.

2. Objectives of Searches and Investigation of Title

- To confirm that the seller has legal ownership and the right to transfer the property.
- To ascertain whether the property is subject to mortgages, liens, easements, or other restrictions.
- To ensure that the title is free from defects and disputes that could affect the buyer's ownership.
- To ensure compliance with statutory requirements and regulations governing property transactions.

3. Types of Searches

a. Title Search or Root of Title search:

- The title search is conducted to review the chain of ownership and confirm the seller's title. The instrument of conveyance must on the face of it establish the following;
- That the document deals with the whole legal and equitable interest in the property.

- That the document contains a proper and sufficient description of the property
- That the document does not contain anything that casts doubt on the title.

Some of the documents that convey a good root of title are;

- Deed of Assignment: A deed of Assignment is an instrument of conveyance which transfers all the rights, title and interest a conveying party has in a property to another. A Deed of Assignment conveys a legal title and its validity depends on its compliance with all statutory requirements concerning the execution and perfection of Instruments.
- A Legal Mortgage: A legal mortgage is the most secure form of mortgage under Nigerian law, where a borrower transfers legal title in a property to a lender as security for a loan, with the title reverting to the borrower upon repayment. It is governed by the **Land Use Act 1978**, **Property and Conveyancing Law (PCL)**, and **Conveyancing Act 1881**. Key features include the transfer of legal title to the lender, compliance with statutory requirements like written execution and registration, and priority over other interests if properly registered.
- Statutory Certificate of Occupancy: The statutory right of occupancy, introduced by the **Land Use Act 1978**, is a formalized land tenure system in Nigeria granting legal rights to occupy and use land for specific purposes and durations. Issued by the state Governor under Sections 5 and 6 of the Act, it provides exclusive possession and is often evidenced by a Certificate of Occupancy (C of O). Key features include defined conditions of use, a typical 99-year term, and the requirement for ground rent payments. The holder must comply with the terms to maintain their rights, with revocation possible for

breaches or overriding public interest. **Dabo v. Abdullahi (2005) 7 NWLR Pt. 923. P.181**

→ Assent: Assent in the Nigerian legal system is the formal process by which a personal representative, such as an executor or administrator, transfers ownership of real property from a deceased person's estate to the rightful beneficiary under a will or intestacy. Under the PCL, It is essential for vesting legal title in the beneficiary, enabling them to own and manage the property fully. Without assent, the beneficiary does not acquire complete ownership rights over the deceased property.

The use of Assent applies in the States under the Old Western Region of Nigeria while in the States outside the Old Western Region, the legal interest in the real property of the deceased rests directly on the beneficiary who takes under the Will.

An assent must satisfy the following conditions; It must be in writing (Not necessarily by deed), It must name the beneficiary, It must be signed by the executors/personal representatives and it must accurately describe the property. Key features of assent include the transfer of legal title, which must be executed in writing and signed by the personal representative. **Mrs Victoria James Unoka v. Agili (2007) 11 NWLR (Pt. 1044) P. 122**

In states with land registration systems, registration at the Land Registry is necessary to perfect the beneficiary title. Executors or administrators must obtain probate or letters of administration before carrying out an assent, ensuring that the process complies with statutory requirements.

Assent is vital for legal ownership, simplifying property transactions for beneficiaries and ensuring compliance with estate laws. It protects the rights of

beneficiaries and formalizes ownership, preventing disputes or complications in the future.

B. Abstract/Epitome of Title

An abstract of Title is a brief history of title of the property showing among other information, how the interest in the property had moved from one person to the other until the present vendor. It equally shows the encumbrances, charges or any other information that may affect the title to the property.

An **Abstract** or **Epitome of Title** is a vital document that summarizes a property's ownership history. It provides evidence of the owner's title and details of property transactions. These documents help establish ownership clarity, which is crucial for legal practitioners, property owners, and investors.

The abstract or epitome typically includes:

- A history of ownership and any transfers, mortgages, or encumbrances.
- Relevant documents such as deeds and certificates of occupancy.
- A chronological record of transactions.

The importance of the abstract or epitome lies in its ability to:

- Ensure transparency in property transactions.
- Prevent fraudulent transactions.
- Support registration under the **Land Use Act of 1978**.

The structure of the abstract includes:

1. Property particulars (location, description).
2. Chain of title (ownership history, transfer details).
3. Encumbrances and interests (e.g., mortgages).

4. Current ownership.

To be valid, an abstract must be:

- Authentic (based on legal instruments).
- Accurate (reflecting the full ownership history).
- Certified by a legal practitioner or relevant authority.

C. Conducting Searches

In investigating title to land, searches are conducted at various registries to verify the authenticity of the documents relied on by the vendor to establish his title. Searches can be conducted at the following places;

a. Land Registry Search:

- Searches are conducted at the Lands Registry when investigating title to land. The following are ascertained;
- Identification of the property
- Ascertaining whether there are encumbrances eg an existing lease or an existing mortgage.
- To verify whether there are outstanding property taxes and rates.

b. Court Search:

- Searches are conducted in the High Courts in the jurisdiction where the land is situated to check for pending litigation, judgments, or disputes involving the property.

C. Searches at the CAC:

Searches are carried out at the CAC in transactions where Companies are party to the contract. Searches are conducted to ascertain whether;

- The purported company is in fact registered.
- There are restrictions on the powers of the company to sell.
- The company pays the required property taxes and rates.
- to verify the corporate status of the seller and ensure that the property is not subject to company charges.

D. Searches at the Probate Registry:

In cases where title devolves by inheritance, searches are extended to the probate registry domiciled with the High Court of every State to investigate;

- Whether probate has been granted.
- Whether Letters of Administration has been granted.
- Whether the vendor is indeed the beneficiary of the property in question.

e. Physical Inspection Survey and Boundary Search:

Physical inspection of the land/property is fundamental in the investigation of titles in land transactions. Physical inspection involves Survey and Boundary Search and Carried out to confirm the accuracy of the property's boundaries and ensure there are no encroachments.

If the land is undeveloped, boundary marks or beacon numbers (as the case may be) are to be checked for correctness and should still exist on the ground.

If the land is developed, the property should be in good condition and that vacant possession would be delivered to the purchaser unless otherwise agreed.

If the land is a family land, the investigation should cover the length of time the family has been in possession or exercised acts of ownership sufficient to establish title.

F. Proof of Title

The Supreme Court in D.O. IDUNDUN & ORS V. DANIEL OKUMAGBA (1976) 9-10 SC 227 outlined the five ways of proving title to land. They are;

- a. By traditional evidence. **Ogun v. Akinyede 92004) 18 NWLR Pt. 905. P. 362**
- b. By production of documents of title which due execution must be proved.
- c. By acts depicting ownership carried out by the person(s) claiming the land such as selling, leasing, renting or farming. Such acts must;
 - Must have been carried out over a reasonable length of time
 - Must be numerous and positive enough to presume that the person(s) is/are the true owner(s)
- d. Acts of long possession and enjoyment of the land. This is *prima facia* evidence of ownership but fails when another person proves a good and superior title.
- e. Proof of possession of connected or adjacent land in circumstances that suggest the owner would, in addition, be the owner of the land in dispute.

G. Requisition of Title

This arises after investigation of Title. This is the right exercisable by the purchaser to ask questions arising from the investigation carried out on the vendor's adduced title.

Requisition of Title in the Nigerian Property Legal System refers to the formal process where a buyer or solicitor raises questions or seeks clarification about the seller's title to a property. This ensures the seller has a valid, marketable title and that the property is free from defects or encumbrances. The process is to;

1. Verify the seller's ownership.
2. Identify encumbrances (e.g., mortgages or liens).
3. Reduce the risk of fraud or disputes.
4. Ensure compliance with laws like the Land Use Act of 1978.

Common Issues that may arise in the requisition of title include:

- Missing or incomplete title documents.
- Unregistered interests.
- Undisclosed encumberances
- Boundary disputes or non-compliance with laws.

Remedies for Defective Title

- a. **Rescission:** The buyer may rescind the contract if there is a material defect in the title.
- b. **Damages:** The buyer may claim damages for losses incurred due to the seller's failure to provide good title.
- c. **Specific Performance:** In some cases, the buyer may seek a court order compelling the seller to rectify non-material title defects and complete the sale.

→ The Completion Stage

This is the second stage in the conveyancing process, the first being the contract stage. At this stage, the purchaser has accepted the title offered by the vendor. This is the stage that vests legal interest in the purchaser. The main features of this stage are;

a. Acceptance of the title offered by the vendor:

This includes;

- The payment of the balance of the purchase price.
- The preparation and execution of the Instrument of conveyance.
- The delivery of the title documents.

b. Perfection of Title

This is the stage where the legal interest of the purchaser is acquired and protected by ensuring compliance with relevant statutory provisions. This involves;

- a. Stamping
- b. Governor's consent
- c. Registration of the Instrument of conveyance.

a. **Stamping:** The Stamp Duties Act provides for the procedure for stamping legal documents. After due execution of an Instrument of Conveyance, copies are taken to the Stamp Duties Office for assessment for payment of stamp duty. After an assessment is done, payment is made and the documents are stamped-signed by the Commissioner/Director for stamp duties. Documents should be stamped within 30 days from due execution.

Consequences of failure to stamp a legal document include;

- It won't be accepted for registration.
- It is inadmissible to prove title.

B. **Governor's Consent:** It is mandatory to obtain the Governor's consent before interest in land can be validly alienated or transferred. This requirement is strict. There is no time limit to obtaining Governor's consent. It is the duty of the holder of the right of occupancy ie the person transferring his right to seek or apply for the consent of the Governor to alienate but in practice, the purchaser's solicitor can do so on behalf of the vendor.

A certificate of occupancy cannot be granted over a disputed land.

C. **Registration of instruments:** An instrument within the context of conveyancing and as defined by the Land Instrument Registration Law is any document affecting land in Nigeria by which one party transfers title or interest in land to another. The purpose of registering documents is to prevent fraud and challenges that arise from the omission of instruments when Title is deduced (through the abstract or epitome of title). Registration does not cure a fraudulent instrument of title and equally does not cure a transfer that is invalid or has no valid root of title.

Consequences of non-registration

1. Inadmissibility: It can't be admitted to prove title but it can be admitted to show that a purchase was made i.e. to show receipt.
2. Priority: Title instruments are prioritized according to the date of registration. (A purchaser of land for value and with notice)

Note: The process is cumbersome and the way around the same invented by solicitors is the use of Power of Attorney. Power of Attorney does not transfer/alienate title. It deals only with the management of the property.

Summary Note compiled by;
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