

**FIRST  
EDITION**

# ISO PRAYMY LORD



LEGAL PRACTICE DEMYSTIFIED  
**ISAAC CHRISTOPHER LUBOGO**

ISAAC CHRISTOPHER LUBOGO

# **I SO PRAY, MY LORD**

*“Legal Practice Demystified”*



**ISAAC CHRISTOPHER LUBOGO**

## **I SO PRAY, MY LORD.: LEGAL PRACTICE DEMYSTIFIED**

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**FIRST EDITION**

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ISAAC CHRISTOPHER LUBOGO

# 'I So Pray, My Lord'

This book consists of



## Volumes

VOLUME ONE	MANAGEMENT SKILLS
VOLUME TWO	ACCOUNTING FOR LAWYERS
VOLUME THREE	TAXATION
VOLUME FOUR	TRIAL ADVOCACY
VOLUME FIVE	PROFESSIONAL CONDUCT



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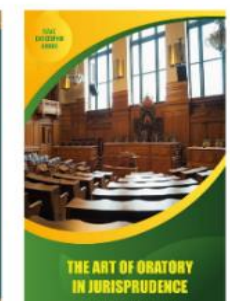
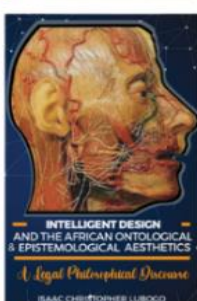
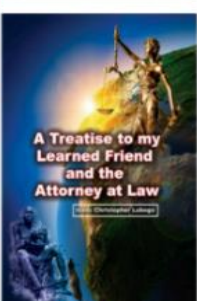
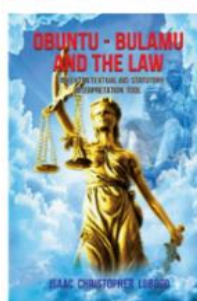
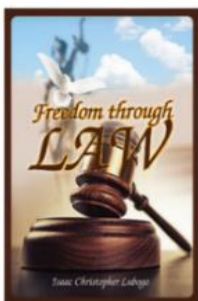
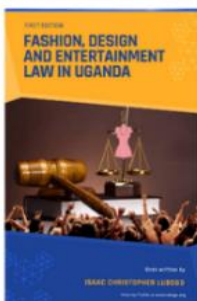
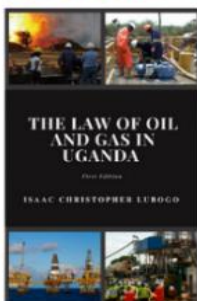
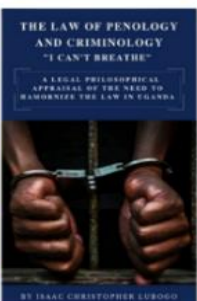
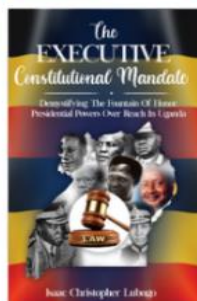
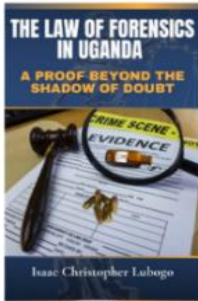
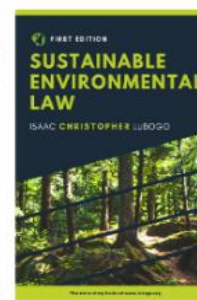
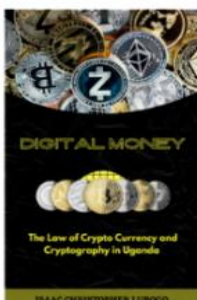
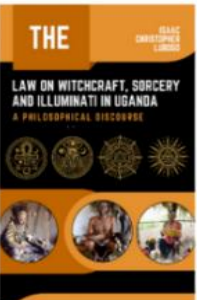
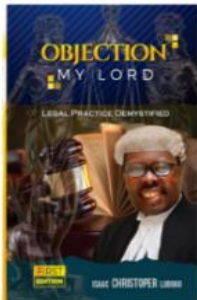
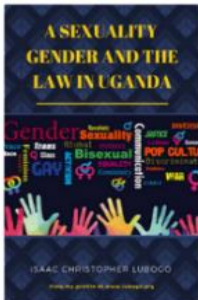
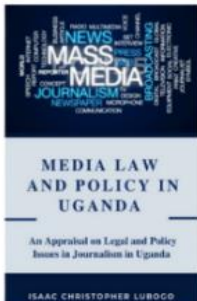
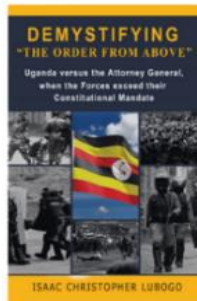
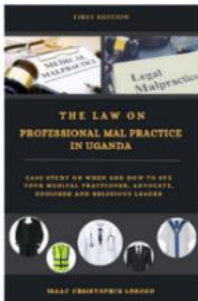
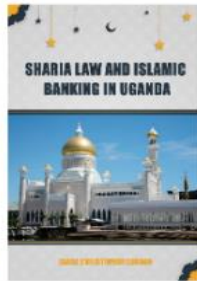
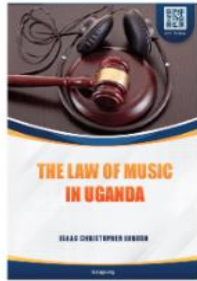
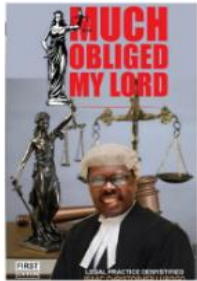
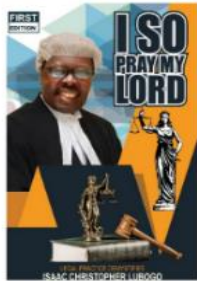
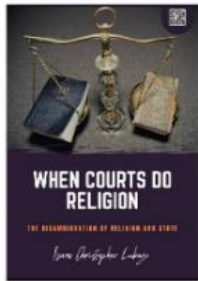
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LEGAL-TECH AND ARTIFICIAL INTELLIGENCE SHAPING  
THE FUTURE OF JUSTICE AND THE LEGAL INDUSTRY

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# DEDICATION

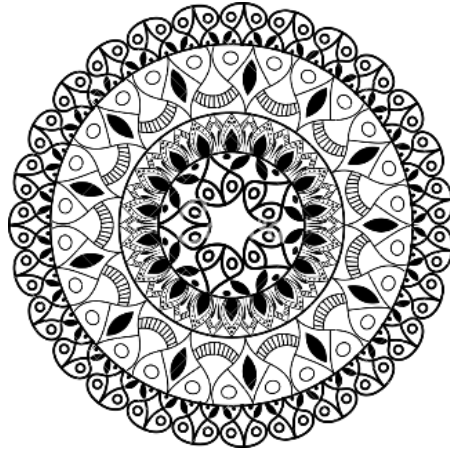


*I dedicate this book to Jireh and the Lord who breathes life and spirit on me.*





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Volume One

**MANAGEMENT SKILLS**

## INTRODUCTION TO MANAGEMENT

### **Are You Ready to Be a Manager?**

Today's environment is diverse, dynamic, and ever-changing. Organisations need managers who can build networks and pull people together. Managers must motivate and coordinate others. Managers are dependent upon subordinates. They are evaluated on the work of others. Managers must focus on innovation to stay competitive. Innovations may include: New products, services & technologies, controlling costs, Investing in the future & Corporate values

### **Why Management?**

One of the top legal firms in the world believed for years that technical expertise was the most important capability for a company to stay competitive. They thought that the best managers were those who left their staff to work independently and intervened only when people got stuck with a technical problem. However, when the firm carried internal research and asked employees what they valued most in a manager, technical expertise ranked last.

So, why is management important?

### **Definitions**

A manager is someone who works with and through people, supervises and coordinates the use of organization's resources in order to accomplish organizational goals. Managers are the executive function of the organization. Resources are organizational assets i.e. People, skills, knowledge, information, raw materials, machinery and financial capital

### **What is management?**

Management skills can be defined as certain attributes or abilities that an executive should possess in order to fulfill specific tasks in an organization. They include the capacity to perform executive duties in an organisation<sup>1</sup> while avoiding crisis situations and promptly solving problems when they occur.

Management skills can be developed through learning and practical experience as a manager. The skills help the manager to relate with their fellow co-workers and know how to deal well with their subordinates, which allows for the easy flow of activities in the organization.<sup>2</sup>

Good management skills are vital for any organization to succeed and achieve its goals and objectives. A manager who fosters good management skills is able to propel the company's mission and vision or business goals forward with fewer hurdles and objections from internal and external sources.<sup>3</sup>

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<sup>1</sup><https://corporatefinanceinstitute.com/resources/management/management-skills/>

<sup>2</sup> Ibid

<sup>3</sup> Ibid

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Management and leadership skills are often used interchangeably as they both involve planning, decision-making, problem-solving, communication, delegation, and time management. Good managers are almost always good leaders as well.<sup>4</sup>

In addition to leading, a critical role of a manager is to also ensure that all parts of the organization are functioning cohesively. Without such integration, several issues can arise, and failure is bound to happen. Management skills are crucial for various positions and at different levels of a company, from top leadership to intermediate supervisors to first-level managers.<sup>5</sup>

While management is both an art and science, it is a very wide and elusive subject, and no conclusive definition exists. Management can be defined as a process, an activity or a profession.

Management is an art and science of getting things done thru and with the help of others<sup>6</sup>. The process of coordinating work activities so that they are completed efficiently and effectively with and through other people. The attainment of organizational goals in an effective and efficient manner through POLC. The social process of planning, organizing, staffing, directing, coordinating & controlling for the determination & achievement of organizational objectives in a dynamic environment.

The term ‘management’, though readily understood, is not easily defined, partly because it is used to describe behaviour in very diverse situations. Charles Handy (1985) says this problem is related to the difficulty of defining a manager’s role. He says that definitions of management tend to be “so broad that they are meaningless or so stereotyped that they become part of the background”. Nevertheless, there are clearly identifiable management functions in an enormous variety of roles. The important issue is whether analysing and evaluating these management functions helps those in the roles to perform them more effectively.<sup>7</sup>

In very simple terms, Armstrong (1999, p. 3) defines management as a process of deciding what to do and then getting it done through the effective use of resources, including people. He explains that people are the most critical resource available to managers, since it is through this resource that all other resources – knowledge, finance, materials, equipment, etc. – will be managed.<sup>8</sup>

Therefore, management is best described as an interactive and dynamic people process in which the manager is personally very active (Armstrong, 1990). Because management is an interactive, engaged process, while the manager benefits from delegating work he or she cannot really delegate core duties and functions away from the team, and so teamwork becomes extremely important. In sum, management can be described as more an art

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<sup>4</sup> Ibid

<sup>5</sup> <https://corporatefinanceinstitute.com/resources/management/management-skills/>

<sup>6</sup> Mary Parker Follet

<sup>7</sup> <https://www.google.com/url?sa=i&rct=j&q=&esrc=s&source=web&cd=&cad=rja&uact=8&ved=0CAMQw7AJahcKEwi41bHF1sT8AhUAAAAAHQAAAAQAw&url=https%3A%2F%2Fwww.ebookbou.edu.bd%2FBooks%2FText%2FSARD%2FDYDW%2Fmodule07.pdf&psig=AOvVaw3ZZwZ4S5r4yWaN1P0FiU8y&ust=1673701420517670>

<sup>8</sup> Ibid

than a science since managers are continually required to use their ongoing judgement and expertise in a dynamic, interactive, team environment. Clearly administration has a part to play in this.<sup>9</sup>

### **What is it Like to Be a Manager?**

The manager's job is diverse and highly fragmented. Managerial tasks can be characterized into characteristics and roles. Most managers enjoy activities like leading others, networking and leading innovation. Managers dislike controlling subordinates, handling paperwork, and managing time pressure

### **What do managers have in common?**

- a) They create the systems, conditions and environment that enable organizations to survive and thrive beyond the tenure of any specific supervisor or manager.
- b) Give direction to their organization, provide leadership, and decide how to use organizational resources to accomplish goals” -Peter Drucker
- c) Build & coordinate an entire system
- d) Create systems/conditions that enable others to perform those tasks
- e) Recognize the key role of people
- f) Managers use a multitude of skills to perform functions

### **TYPES OF MANAGERS<sup>10</sup>**

a) Top managers - responsible for making organization-wide decisions and establishing the plans and goals that affect the entire organization.<sup>11</sup> Top-level managers, or top managers, are also called senior management or executives. Leaders of the organisation are setting in top-level management. These individuals are at the top one or two levels in an organization and hold titles such as Chief Executive Officer (CEO), Chief Financial Officer (CFO), Chief Operational Officer (COO), Chief Information Officer (CIO), Chairperson of the Board, President, Vice president, Corporate head.

- Top-level managers make decisions affecting the entirety of the firm.
- Top managers do not direct the firm's day-to-day activities; instead, they set goals for the organisation and direct the company to achieve them.

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<sup>9</sup><https://www.google.com/url?sa=i&crct=j&q=&esrc=s&source=web&cd=&cad=rja&uact=8&ved=0CAMQw7AJahcKEwi41bHF1sT8AhUAAAAAHQAAAAQAw&url=https%3A%2F%2Fwww.ebookbou.edu.bd%2FBooks%2FText%2FSARD%2FDYDW%2Fmodule07.pdf&psig=A0vVaw3ZZwZ4S5r4yWaN1P0FiU8y&cust=1673701420517670>

<sup>10</sup> <https://www.studocu.com/en-gb/document/university-of-south-wales/managing-organisations-people/management-notes-summary-managing-organisations-people/924027>

<sup>11</sup> <https://www.studocu.com/en-gb/document/university-of-south-wales/managing-organisations-people/management-notes-summary-managing-organisations-people/924027>



## ISO PRAY, MY LORD

- Top managers are ultimately responsible for the organization's performance, and often, these managers have obvious jobs.

Top-level managers require having excellent conceptual and decision-making skills<sup>12</sup> Top-level managers are responsible for setting goals, creating plans, and supervising the entire organization. Middle-level managers are engaged in diverting organizational activities to attain the goals set by top management. The lower-level managers run every organizational work unit and carry out the essential tasks. They are the foot soldiers of the company.

b) Middle managers - all managers between the first-line level and the top level of the organization. Manage the first-line managers. Middle level managers: Middle-level managers, or middle managers, are those in the levels below top managers. Middle managers' job titles include General Manager, Plant Manager, Regional Manager, and Divisional manager.

- Middle-level managers are responsible for carrying out the goals set by top management. They do so by setting goals for their departments and other business units.
- Middle managers control, motivate and assist first-line managers in achieving business objectives.
- Middle managers also communicate upward by offering suggestions and feedback to top managers. In addition, because middle managers are more involved in the day-to-day workings of a company, they may provide valuable information to top managers to help improve the organization's bottom line.

Middle-level managers' job perfection depends very much on these communication and interpersonal skills.<sup>13</sup>

c) First-line managers: manage the work of non-managerial individuals who are directly involved with the production or creation of the organization's products. These are also called lower-level managers, shop level or supervisors. These managers have job titles such as office manager, Shift Supervisor, Department Manager, Foreperson, Crew leader, and Store manager.<sup>14</sup>

- First-line managers are responsible for the daily management of line workers—the employees who produce the product or offer the service.
- There are first-line managers in every work unit in the organization. These are the managers that most employees interact with daily, and if the managers perform poorly, employees may also perform poorly, may lack motivation, or may leave the company. Although first-level managers typically do not set goals for the organization, they have a powerful influence on the company.

A First-level manager requires technical skills and knowledge for the particular work he supervises.<sup>15</sup>

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<sup>12</sup> <https://www.iedunote.com/3-levels-of-management-organizational-hierarchy>

<sup>13</sup> Ibid

<sup>14</sup> <https://www.iedunote.com/3-levels-of-management-organizational-hierarchy>

<sup>15</sup> Ibid

## **NATURE OF MANAGEMENT**

Management as a science, not an exact science is a social science which deals with behaviour of people in organizations. Management principles based on observed phenomenon, systematic classification, and analysis of data.

Management as an art, application to solution of practical problem is an art

Management as a profession, professional manager- one who undertakes management as a career and not interested in acquiring ownership. Profession has following characteristics

- a) A body of principles, techniques, skills and specialized knowledge
- b) Formalized methods of acquiring training & experience
- c) Establishment of a representative organization with professionalization as its goal
- d) Formation of ethical codes for the guidance of conduct
- e) Charging of fees based on services

## **MANAGEMENT VS ADMINISTRATION**

Practically, there is no difference between management & administration. i.e. the managers who are higher up in the hierarchy denote more time on administrative function & the lower level denote more time on directing and controlling worker's performance.

The difference can be summarized under :-

- a) Functions
- b) Usage / Applicability
- c) Organizational Performance
- d) Organization - social entity that is goal directed and deliberately structured
- e) Effectiveness - degree to which organization achieves a stated goal
- f) Efficiency - use of minimal resources (raw materials, money, and people) to produce the desired volume of output
- g) Performance – organization's ability to attain its goals by using resources in an efficient and effective manner

The Management Functions

## I SO PRAY, MY LORD

- a) Planning. Identifying goals and resources or future organizational performance.
- b) Organizing. Assigning tasks, delegating authority and allocating resources.
- c) Staffing. Having the right person in the right place at the right time.
- d) Leading/Directing. The use of influence to motivate employees to achieve goals – inspiring & motivating!
- e) Controlling. Monitoring activities and taking corrective action when needed.

### MANAGEMENT ROLES

- a) Human/ Interpersonal - involve people and duties that are ceremonial and symbolic in nature.<sup>16</sup> The human or the interpersonal skills are the skills that present the managers' ability to interact, work or relate effectively with people. These skills enable the managers to make use of human potential in the company and motivate the employees for better results.<sup>17</sup> Involves the ability to work well with people.
- b) Informational - receiving, collecting, and disseminating information. Understanding about human skills for managers to extract work from employees. The most significant role for managers is to effectively manage people in organization and to give best output. Human relations skills are also called Interpersonal skills. It is a capability to work with individuals.<sup>18</sup> It assists the managers to comprehend, converse and work with others. It also helps the managers to lead, encourage and develop team strength. Human relations skills are necessary by all managers at all levels of management. All managers have to work together. These skills will allow managers to become leaders, to inspire employees to do best and complete task successfully. Some of human relation skills include Sensitivity to others, treating people fairly, listening intently, Communicating warmth, Establishing rapport, Understanding human behaviour, Empathy, Tactfulness, Cooperative team member, Avoiding stereotyping people, Feeling comfortable with different kinds of people, Fun person to work with, Treating others as equals, Dealing effectively with conflict, Helping clarify misunderstandings, Creating an environment of social interaction.<sup>19</sup>
- c) Decisional - revolve around making choices emphasis that managers give to the various roles seems to change with their organizational level.
- d) Technical - knowledge of and proficiency in a certain specialized field. Technical skills involve skills that give the managers the ability and the knowledge to use a variety of techniques to achieve their objectives. These skills not only involve operating machines and software, production tools, and pieces of

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<sup>16</sup> <https://www.studocu.com/en-gb/document/university-of-south-wales/managing-organisations-people/management-notes-summary-managing-organisations-people/924027>

<sup>17</sup> Ibid

<sup>18</sup> <https://www.civilserviceindia.com/subject/Management/notes/managerial-skills.html>

<sup>19</sup> Ibid

equipment but also the skills needed to boost sales, design different types of products and services, and market the services and the products.<sup>20</sup> Technical skills give the manager knowledge and ability to use different techniques to achieve what they want to achieve. Technical skills are not related only for machines, production tools or other equipment, but also, they are skills that will be required to increase sales, design different types of products and services, market the products and services.<sup>21</sup> Technical skills are most important for first-level managers. When it comes to the top managers, these skills are not something with high significance level. As we go through a hierarchy from the bottom to higher levels, the technical skills

- e) Conceptual - ability to think and to conceptualize about abstract and complex situations,<sup>22</sup> see the organization as a whole, understand the relationships among sub-units visualize how the organization fits into its broader environment. These involve the skills managers present in terms of the knowledge and ability for abstract thinking and formulating ideas. The manager is able to see an entire concept, analyse and diagnose a problem, and find creative solutions. This helps the manager to effectively predict hurdles their department or the business as a whole may face.<sup>23</sup>

Conceptual skills are talent or understanding of managers for abstract thinking to assess whole situation and identify different states and to foresee the future state of the business. Conceptual skills is the ability of a manager to envisage the organisation as whole, distinguish interrelationships and be aware of how the organisation fits into the civilization, community and the world ( K.N. Bartol).<sup>24</sup> Conceptual skills exploit the ability of a human to form concepts. Such skills include thinking creatively, formulating abstractions, analysing complex situations, and solving problems. Such skills assist management team to understand the major causes of the problems and not the symptoms. Managers that have mastery over these skills are in a position to solve the problems and enhance productivity of organisation.<sup>25</sup> It also helps the manager to establish goals for organisation and devise plan for every situation. Prof. Robert Katz describe that conceptual skills are needed by the senior management because they are involved in planning, organising and problem-solving tasks. In the business filed, these skills are necessary for managements to operate business successfully. Conceptual skills are used in planning and dealing with ideas and abstractions. Such abilities enable manager to make good decision which is a characteristic of all managers (Katz, R. 1974).<sup>26</sup>

## EXAMPLES OF MANAGEMENT SKILLS

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<sup>20</sup> <https://corporatefinanceinstitute.com/resources/management/management-skills/>

<sup>21</sup> <https://www.pfh-university.com/blog/three-types-managerial-skills>

<sup>22</sup> <https://www.studocu.com/en-gb/document/university-of-south-wales/managing-organisations-people/management-notes-summary-managing-organisations-people/924027>

<sup>23</sup> Ibid

<sup>24</sup> <https://www.civilserviceindia.com/subject/Management/notes/managerial-skills.html>

<sup>25</sup> Ibid

<sup>26</sup> <https://www.civilserviceindia.com/subject/Management/notes/managerial-skills.html>

## I SO PRAY, MY LORD

There is a wide range of skills that management should possess to run an organization effectively and efficiently. The following are six essential management skills that any manager ought to possess for them to perform their duties:

### 1. Planning

Planning is a vital aspect within an organization. It refers to one's ability to organize activities in line with set guidelines while still remaining within the limits of the available resources such as time, money, and labour. It is also the process of formulating a set of actions or one or more strategies to pursue and achieve certain goals or objectives with the available resources.<sup>27</sup>

The planning process includes identifying and setting achievable goals, developing necessary strategies, and outlining the tasks and schedules on how to achieve the set goals. Without a good plan, little can be achieved.

### 2. Communication

Possessing great communication skills is crucial for a manager. It can determine how well information is shared throughout a team, ensuring that the group acts as a unified workforce. How well a manager communicates with the rest of his/her team also determines how well outlined procedures can be followed, how well the tasks and activities can be completed, and thus, how successful an organization will be.

Communication involves the flow of information within the organization, whether formal or informal, verbal or written, vertical or horizontal, and it facilitates the smooth functioning of the organization. Clearly established communication channels in an organization allow the manager to collaborate with the team, prevent conflicts, and resolve issues as they arise. A manager with good communication skills can relate well with the employees and, thus, be able to achieve the company's set goals and objectives easily.<sup>28</sup>

### 3. Decision-making

Another vital management skill is decision-making. Managers make numerous decisions, whether knowingly or not, and making decisions is a key component in a manager's success. Making proper and right decisions results in the success of the organization, while poor or bad decisions may lead to failure or poor performance.

For the organization to run effectively and smoothly, clear and right decisions should be made. A manager must be accountable for every decision that they make and also be willing to take responsibility for the results of their decisions. A good manager needs to possess great decision-making skills, as it often dictates his/her success in achieving organizational objectives.<sup>29</sup>

### 4. Delegation

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<sup>27</sup> <https://corporatefinanceinstitute.com/resources/management/management-skills/>

<sup>28</sup> <https://corporatefinanceinstitute.com/resources/management/management-skills/>

<sup>29</sup> Ibid

Delegation is another key management skill. Delegation is the act of passing on work-related tasks and/or authorities to other employees or subordinates. It involves the process of allowing your tasks or those of your employees to be reassigned or reallocated to other employees depending on current workloads. A manager with good delegation skills is able to effectively and efficiently reassign tasks and give authority to the right employees. When delegation is carried out effectively, it helps facilitate efficient task completion.

Delegation helps the manager to avoid wastage of time, optimizes productivity, and ensures responsibility and accountability on the part of employees. Every manager must have good delegation abilities to achieve optimal results and accomplish the required productivity results.

#### 5. Problem-solving

Problem-solving is another essential skill. A good manager must have the ability to tackle and solve the frequent problems that can arise in a typical workday. Problem-solving in management involves identifying a certain problem or situation and then finding the best way to handle the problem and get the best solution. It is the ability to sort things out even when the prevailing conditions are not right. When it is clear that a manager has great problem-solving skills, it differentiates him/her from the rest of the team and gives subordinates confidence in his/her managerial skills.<sup>30</sup>

#### 6. Motivating<sup>31</sup>

The ability to motivate is another important skill in an organization. Motivation helps bring forth a desired behaviour or response from the employees or certain stakeholders. There are numerous motivation tactics that managers can use and choosing the right ones can depend on characteristics such as company and team culture, team personalities, and more. There are two primary types of motivation that a manager can use. These are intrinsic and extrinsic motivation.

Management skills are a collection of abilities that include things such as business planning, decision-making, problem-solving, communication, delegation, and time management. While different roles and organizations require the use of various skill sets, management skills help a professional stand out and excel no matter what their level. In top management, these skills are essential to run an organization well and achieve desired business objectives.<sup>32</sup>

### **PROBLEMS FACED BY MANAGERS.**

- a) The impact of governments: In some developing countries, there is a general perception that public resources are being mismanaged – for example, if a government spends money earmarked for development on political election campaigns. An improvement in the effectiveness of public

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<sup>30</sup> *ibid*

<sup>31</sup> <https://corporatefinanceinstitute.com/resources/management/management-skills/Ibid>

<sup>32</sup> *Ibid*

## I SO PRAY, MY LORD

management is an important condition of sustainable development (Howell in Blunt et al, 1993, p. 88).<sup>33</sup>

- b) Inappropriate management styles; In many cases, Western management styles have been adopted as appropriate for management in Africa and Asia, but the special circumstances and conditions of organisations in developing countries have sometimes not been considered. For example, in African organisations, the views of local grassroots organisations and communities are dominant and should always be kept in mind. This is not necessarily part of Western management style.<sup>34</sup>
- c) Favouritism: Goran Hyden (in Blunt et al, 1993, p. 88) sees the fundamental problems of African management as lying in: “the economy of affection which means that the network of support, communications and interaction among structurally-defined groups connected by blood, kin, community or other affinities, (for example religion)” that determines who will get government-funded jobs. So, employment in and for government, for example, does not rest on the employee’s skills and abilities but on whom in the government s/he is related to.<sup>35</sup>
- d) Elitism: The elite may manage the system in their own interests, together with aid organisations and donor governments.<sup>36</sup>
- e) Excessive bureaucracy: This derives from over emphasis on classical management practices. The focus tends to be on management procedures as ends in themselves rather than on using procedures to tackle the practical problems faced by management and make organisations more effective. Governments may use long and often irrelevant processes in order to ensure that the correct procedure is in place, but this is at the expense of the people affected by these processes.<sup>37</sup>

## WHEN SKILLS FAIL

Management skills are tested most during turbulent times. Many managers fail to comprehend and adapt to the rapid pace of change in the world

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<sup>33</sup><https://www.google.com/url?sa=i&rct=j&q=&esrc=s&source=web&cd=&cad=rja&uact=8&ved=0CAMQw7AJahcKEwi41bHF1sT8AhUAAAAAHQAAAAAAQAw&url=https%3A%2F%2Fwww.ebookbou.edu.bd%2FBooks%2FText%2FSARD%2FDYDW%2Fmodule07.pdf&psig=AOvVaw3ZZwZ4S5r4yWaN1P0FiU8y&ust=1673701420517670>

<sup>34</sup> Ibid

<sup>35</sup><https://www.google.com/url?sa=i&rct=j&q=&esrc=s&source=web&cd=&cad=rja&uact=8&ved=0CAMQw7AJahcKEwi41bHF1sT8AhUAAAAAHQAAAAAAQAw&url=https%3A%2F%2Fwww.ebookbou.edu.bd%2FBooks%2FText%2FSARD%2FDYDW%2Fmodule07.pdf&psig=AOvVaw3ZZwZ4S5r4yWaN1P0FiU8y&ust=1673701420517670>

<sup>36</sup> Ibid

<sup>37</sup><https://www.google.com/url?sa=i&rct=j&q=&esrc=s&source=web&cd=&cad=rja&uact=8&ved=0CAMQw7AJahcKEwi41bHF1sT8AhUAAAAAHQAAAAAAQAw&url=https%3A%2F%2Fwww.ebookbou.edu.bd%2FBooks%2FText%2FSARD%2FDYDW%2Fmodule07.pdf&psig=AOvVaw3ZZwZ4S5r4yWaN1P0FiU8y&ust=1673701420517670>

Common failures include:

- a) **Poor Communication:** Communication is one of the core aspects of a successful team, so your communication style as a leader significantly affects your leadership efforts. Everyone on your team requires consistent, clear communication about your expectations for the group. Maximize efficiency by regularly meeting with your team as individuals and as a group to communicate information about goals and explain changes to the workplace.<sup>38</sup>

Remove confusion in your role as a leader by using both verbal and written communication to share performance benchmarks and record best practices for accomplishing tasks. Comment on positive behaviours to encourage your team and provide thoughtful, constructive feedback to improve their skills. Support mutual communication by providing your team with channels to make suggestions about your leadership techniques.<sup>39</sup>

- b) **Poor Interpersonal Skills:** particularly in the early and middle stages of a manager's career. For some, the problem is the ability to inspire and win loyalty with subordinates. This is usually the result of poor listening skills and the inability to give and take criticism well. These managers often view conflict as something bad, instead of something inevitable that needs to be handled.<sup>40</sup>
- c) Treating employees as instruments.
- d) **Failure to clarify direction and performance expectations:** It's challenging to lead a team when you're unsure of the goals you want to meet. Team members rely on leaders to establish key objectives and make a plan for achieving those goals. Defining specific goals for yourself and your team guides your leadership efforts, helps you track your progress and makes it easier to identify challenges.<sup>41</sup>

Use data from your team's past projects to establish a baseline level of productivity, then identify areas for growth. Write down a few goals for each team member to focus on and include a timeline for when you expect them to accomplish each goal. Post the goals in an easily accessible and visible location to provide regular reminders to the team.<sup>42</sup>

- e) Being Too Friendly

Most of us want to be seen as friendly and approachable to people in our team. After all, people are happier working for a manager that they get on with. However, you'll sometimes have to make tough decisions regarding people in your team, and some people will be tempted to take advantage of your relationship if you're too friendly with them. This doesn't mean that you can't socialize with your people. But you do need to get the

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<sup>38</sup> <https://www.indeed.com/career-advice/career-development/failure-of-leadership>

<sup>39</sup> Ibid

<sup>40</sup> <https://www.loyaltyleader.com/why-so-many-managers-fail/>

<sup>41</sup> <https://www.indeed.com/career-advice/career-development/failure-of-leadership>

<sup>42</sup> Ibid



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balance right between being a friend and being the boss. Also, make sure that you set clear boundaries so that team members aren't tempted to take advantage of you.<sup>43</sup>

### f) Failing to Define Goals

When your people don't have clear goals, they muddle through their day. They can't be productive if they have no idea what they're working for, or what their work means. They also can't prioritize their workload effectively, meaning that projects and tasks get completed in the wrong order.

Avoid this mistake by learning how to set smart goals for your team. Use a team charter to specify where your team is going and detail the resources it can draw upon.<sup>44</sup>

## MANAGING DURING TURBULENT TIMES

During turbulent times, managers really have to stay on their toes, and use all their skills and competencies to benefit the organizations and its stakeholders – employees, customers, investors, the community and so forth.<sup>45</sup>

### a) Communicating with clarity, listening with interest

High-performing teams and organizations are built on a foundation of leadership communication skills. With clear, direct communication, leaders set the tone for honesty and collaboration from the top. Effective managers practice their communication skills to streamline operations, bolster culture, and deepen engagement. And, most important, it creates a better employee experience.<sup>46</sup> Though often overlooked, listening skills are as important as speaking and writing. Managers need to work on their listening skills to increase understanding. It helps to be open to different ideas and makes people feel respected and heard.

How to improve: Effective communication requires preparation, practice, and feedback. Strong communicators run productive meetings and convey important information by using multiple methods. Sometimes, this includes verbal, written, and visual messages to support different learning styles. Managers at all levels of experience can benefit from communication training.<sup>47</sup>

### b) Thinking strategically, problem-solving, and making timely decisions

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<sup>43</sup><https://www.mindtools.com/a125fey/10-common-leadership-and-management-mistakes>

<sup>44</sup> Ibid

<sup>45</sup> <https://www.citeman.com/11254-when-skills-fail.html>

<sup>46</sup> <https://www.betterup.com/blog/management-skills>

<sup>47</sup> Ibid

Decision-making, problem-solving and strategic thinking are important management skills for managers and leaders at all levels. Each skill is distinct, yet they're all related to big picture thinking.<sup>48</sup>

- Timely decision-making. Both new and experienced managers too often delay making decisions because they're afraid of being wrong. While decisions need to be well considered, managers should avoid dragging their feet. This gives team members less time to execute, causing stress and decreasing work quality.
- Problem-solving. When presented with problems, effective managers help teams flip the switch and think creatively. They view challenges as opportunities for learning, brainstorming new ideas, and improving ways of working.
- Strategic thinking. Like an architect drawing a blueprint, a strong grasp of operating strategy helps managers step back. This helps leaders to create an overall plan to guide themselves and their team to focus and achieve the goals that matter most.

How to improve: Managers can strengthen strategic, problem-solving, and decision-making skills by encouraging input, brainstorming, and empowering team members to take on more challenges and decisions on their own. This also means being ok with making mistakes. Managers demonstrate their own behaviour by accepting responsibility for mistakes. They show it's how one handles and learns from mistakes is more important than striving for perfection.<sup>49</sup>

c) Managing time based on priorities

No manager or team can do it all. That's why time management and prioritizing are such essential management skills, especially in today's high-pressure work environment. When a manager uses poor time management, it causes burnout and harms employee well-being.<sup>50</sup>

By prioritizing goals, projects, and tasks, managers help themselves and their teams focus on what's important – and let go of what's not. Efficient time management means setting reasonable and realistic expectations, as well as protecting and respecting employees' time.

How to improve: Strengthening your time management skills begins with developing self-awareness to identify problem areas and understand your relationship to time. Asking for feedback is a good way to start, as it's often easier for others to spot time-saving opportunities and time-wasting behaviours. Try a time-tracking tool and conduct a time audit to get a clear picture of how you currently use time. Identify the time management skills you most want to strengthen, such as prioritization and delegation, and pick one at a time to work on. For example, you may decide to adopt new habits and techniques, such as weekly and daily planning.

d) Organizing to win

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<sup>48</sup> <https://www.betterup.com/blog/management-skills>

<sup>49</sup> Ibid

<sup>50</sup> <https://www.betterup.com/blog/management-skills>

## I SO PRAY, MY LORD

A good manager sets up their team for success by creating organisational skills that outline clear roles, responsibilities, and processes to get work done. With a strong structure in place, managers help minimize friction and smooth the path for delegating tasks and empowering their team.

Though it may seem counter-intuitive, the structure creates freedom and room to innovate because it frees up time and space to think beyond the routine. Still, organisational structures also need to be flexible. Effective managers allow team members to work outside the lines when it makes sense, and make sure they feel comfortable with proposing new processes and ways of working that may save time, improve customer service, or add other value.

How to improve: Empowerment is the key to effective delegation. Instead of having an answer to every question, the most effective managers are coaches -- people who can guide others to arrive at their own solutions, put them into action, and set goals, says researcher and management consultant Julia Milner. By working on your coaching skills, you can learn how to avoid micromanaging and develop individuals' strengths instead.<sup>51</sup>

### e) Inclusive leadership skills

With more dispersed teams, BetterUp research indicates that a sense of connection and community makes big impact on employee success and retention, and managers play a leading role in creating the cultural glue that helps people stick together. When managers learn and strengthen skills in building relationships, trust, and inclusion, their teams and people thrive.

BetterUp studied the impact of inclusive leaders. What is it? We've defined inclusive leadership as creating an environment of involvement, respect, and connection. It's an inclusive environment where the richness of ideas, backgrounds, and perspectives are harnessed to create business value.

From better onboarding to encouraging participation by inviting newcomers and junior members to meetings, managers can build a stronger culture of inclusion.

"Creating a culture where employees feel like they're valued and respected, they're included, they belong, that's what it all boils down to. Leaders who can create those environments are pretty game-changing for culture

How to improve: The best thing about strengthening cultural skills is you don't do it alone. While your HR organization should have support for managers looking to build community and connection, your team will likely be the best source. Ask your team to help brainstorm ideas, ask for volunteers to plan and lead activities, and you'll be on your way.<sup>52</sup>

Applying emotional intelligence for managing yourself and others. Though the concept of emotional intelligence (EI) took the business world by storm nearly three decades ago, it took a pandemic for organizations

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<sup>51</sup> Ibid

<sup>52</sup> Ibid

to recognize the true importance for managers and their teams. Managers with strong emotional intelligence skills are great to work with, as they operate with self-awareness, empathy, and a knack for diffusing difficult situations.

How to improve: While some people tend to have naturally high EI, anyone can strengthen the related skills and qualities. It's well worth the effort because EI will improve both your work and personal life. You can get started with these quick tips for developing emotional intelligence. If you want to invest more in your personal as well as business growth, try EI training and coaching for leaders.<sup>53</sup>

f) Hiring, developing, and keeping the best people

Top managers become people magnets for employee retention, recruiting, and hiring by building and developing a team of people who are better than they are in the skills they were hired to do. There are many ways to increase retention, starting with becoming the best manager you can be by working on the skills that will help your team the most.

As we know, teams with a feeling of strong connection and belonging are more likely to stay together. Moreover, when positions open, managers can enlist team members in recruiting their next colleague, bringing higher-quality employee referrals to the process. Developing a positive team culture begins with the hiring and interview process. Good managers provide a clear description of the position's skills and requirements. In interviews, ask open-ended questions, listen closely, and follow up on answers that need further exploration. You can learn more about a candidate by treating them with respect and putting them at ease. In turn, their first impression will be more likely to be of a manager they'd like to work for.<sup>54</sup>

Hiring decisions aren't easy. Managers who prioritize their team culture base the selection process on both the needs of the job and the cultural fit with the team and organization.

How to improve: Developing strong retention and recruitment is an ongoing journey that depends on nurturing your team culture over time. If you're concerned about making smart and objective hiring decisions, you may benefit from self-awareness and bias training. Managers also can gain insight, especially into cultural fit, by asking team members to assist in the interview and selection process.

While these skills are important for managers of teams of all sizes, there are some skills that are especially critical when leading larger teams and managing small teams.<sup>55</sup>

**Take home assignment!**

1. Write down your personal motivation!
2. At business/organizational level -The concern is "enhancing productivity or organizational performance". Thus, discuss relevance of management to a local law firm.

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<sup>53</sup> Ibid

<sup>54</sup><https://www.betterup.com/blog/management-skills>

<sup>55</sup><https://www.betterup.com/blog/management-skills>

## MANAGING PEOPLE

### Introduction

People are an organisation's most important assets. That is why every manager, regardless of his functional area or level in the organizational structures should have the basics in people management. But it is challenging to find the right staff with a combination of technical competence, high ethical standards, and drive

People management is the process of training, motivating, and directing employees to optimize workplace productivity and promote professional growth. Workplace leaders, such as team leads, managers and department heads use people management to oversee workflow and boost employee performance every day.<sup>56</sup>

So, managers need to;

1. Hire the right people
2. Enable their people
3. Motivate and energize the people

### KEY MANAGERIAL HUMAN RESOURCE CONCERNS

The Human Resource is the most important resource in an organization. It is concerned with:

- Attracting and retaining the right people;
- Motivating people;
- Developing employee skills;
- Managing talent;
- Managing performance;
- Dealing with negative employee behaviour;
- Building a learning organization; and
- Change management

### What will you do as a manager?

When you come across two types of employees; The nonperforming and difficult employee, the performing but difficult employee, the nonperforming and difficult employee should be evaluated and assigned different

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<sup>56</sup> <https://www.indeed.com/career-advice/career-development/guide-to-people-management>

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positions. They should be taken through coaching, training, and mentorship with hope that things will become better. However, if nothing happens after going through disciplinary route, then let the employee go.

The difficult but performing employee might be tricky to let go immediately due to many reasons

1. He brings in big clients and money that keeps the organization going
2. He puts the team on top of the performance chart
3. He is talented
4. He supersedes his targets
5. He is highly innovative
6. He challenges sloppy workers

However, he is not a team player, occasionally stands up to the boss setting a bad example to the rest, no one knows what he is up to.

- a) Do not give special favours due to his superior performance
- b) Give him leadership responsibility (Ferguson and Arsene Wenger turned their bad boys into jewels by rewarding them with leadership positions)
- c) Explain and don't give orders
- d) Develop organizational values
- e) Tell the employee no one is indispensable

## **THE WHEEL OF SUCCESSFUL HR IN SERVICE FIRMS MANAGEMENT SKILLS**

Leadership that:

- a) Focuses the entire organization on supporting the frontline
- b) Fosters a strong service culture with passion for service and productivity
- c) Drives values that inspire, energize and guide service providers

### **What is managed in people?**

- a) Skills
- b) Abilities
- c) Knowledge

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- d) Attitudes
- e) Interests
- f) Careers
- g) Personality Talent

### **Why manage people?**

- a) Direct desired behaviour.
- b) Prepare them for future changes
- c) It's a stepping stone to building organizational culture.
- d) Enhances employee commitment and loyalty. through open communication systems, participatory performance systems etc
- e) Contributes to Quality management.
- f) Manager is able to development employees
- g) Performance management. introduce systems that clarify objectives as well as setting systems of measuring performance at all levels in the organization

### **CURRENT CHALLENGES IN MANAGING PEOPLE**

- a) The work force is not committed or loyal to the organization due to conflict of interest
- b) Varying expectations among workers
- c) Influence of trade unions
- d) Diversity in the work force
- e) Rights of privacy e.g. Employees may have rights over their personal information
- f) Globalization effects, expatriate labour, cultural shock, e-workers or virtual workers
- g) Changes in technology which necessitates management to ensure their employees are abreast with the recent trends
- h) Individual challenges
- i) Individual Differences
- j) Attitudes and perceptions

- k) Motivation
- l) Cultural differences
- m) Behaving Ethically

## **TIPS ON MANAGING PEOPLE SKILLS**

1. **Build Relationships:** Managing is about people. Great managers build lasting relationships with their people that are based on trust, respect and communication
2. **Be Accountable:** Managers are quick to hold employees accountable for performance failures or bad behaviour. When they fail to hold themselves accountable, they fail to manage their people. Managers willing to take a bullet for their employees are able to gain the respect and trust needed to effectively manage their people.
3. **Listen:** Great managers also do not wait for employees to come to them. Instead, they proactively seek feedback and address issues before they create any problems.
4. **Be Transparent:** Never hide anything from your people. It is deceptive and can cost you their respect. This does not mean that you should blab inside information that upper management has deemed confidential.
5. **Support Career Development:** Good employees are hard to find and even harder to replace. In an attempt to keep good employees, some managers avoid career development. They do not help their people prepare for future advancement opportunities within the company.
6. **Consistency:** Team members should all be treated in a comparable way without favourites or discrimination.
7. **Respect:** Different team members have different skills and these differences should be respected.
8. **Inclusion:** Involve all team members and make sure that people's views are considered.
9. **Honesty:** You should always be honest about what is going well and what is going badly in a project.

## **DEVELOPING PEOPLE SKILLS**

The trends in the workplace today require employees to continuously hone their knowledge, skills and abilities to cope with new processes, systems and technologies so as to be able to develop the skills that will enable them handle new and more demanding assignments

## **EMPLOYEE DEVELOPMENT**

The combination of formal education, job experiences, relationships, and assessment of personality and abilities to help employees prepare for the future of their careers. Development is about preparing for change in the form of new jobs, new responsibilities, or new requirements.



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Why employee development?

- a) To improve quality.
- b) To meet the challenges of global competition and social change.
- c) To incorporate technological advances and changes in work design.
- d) One way to motivate employees
- e) To prepare them for succession
- f) Reduces employee turnover

Four Approaches to Employee Development.

- a) Formal Education; These may include:
  - 1. Workshops
  - 2. Short courses
  - 3. Lectures
  - 4. Simulations
  - 5. Business games
  - 6. Experiential programs
  - 7. Many companies operate training and development centres.
- b) Assessment: Involves collecting information and providing feedback to employees about their behaviour, communication style, or skills. Information for assessment may come from the employees, their peers, managers, and customers. Another way to develop employees is to begin with an assessment which may consist of assigning an activity to a team and seeing who brings what skills and strengths to the team.

## ASSESSMENT TOOLS

- a) Myers-Briggs Type Indicator (MBTI)
- b) Assessment Centres Benchmarks Assessment Performance Appraisal 360-Degree Feedback.

- c) Job experiences: the combination of relationships, problems, demands, tasks, and other features of an employee's jobs. Most employee development occurs through job experiences.

Key job experience events include:

1. Job assignments
2. Interpersonal relationships.

Through these experiences, managers learn how to handle common challenges, and prove themselves.

Working outside one's home country is the most important job experience that can develop an employee for a career in the global economy.

- d) Interpersonal relationships: employees can also develop skills and increase their knowledge about the organization and its customers by interacting with a more experienced member: mentoring, coaching

## **MANAGING NEGATIVE BEHAVIOUR**

Counter Productive work behaviours is used as an umbrella label to mean behaviour that is intended to have detrimental effect on organizations and their members contrary to the legitimate interests of the organization. The negative behaviours have been labelled as aggression, antisocial behaviour, deviance, delinquency, revenge, retaliation, theft, drug abuse, alcohol use, absenteeism and unsafe behaviours like accidents. Managers need to understand and develop work strategies and practices that will reduce on counterproductive work behaviours in organizations

How can this be effectively done?

1. Open communication. In an open climate, employees feel free to express opinions, voice complaints, and offer suggestions to their superiors. Open communication climate is desirable because it enhances human relationships, which occasion increases morale and productivity.
2. Enhanced self-control. Self-control is the ability of the individual to contemplate consequences in the long term before satisfying his or her current needs. A combination of perceived stressors and insufficient control is likely to trigger negative emotions.
3. Clear Conflict resolution strategies: Conflict refers to a serious disagreement, argument, or differences between two or more parties which in itself could be caused by differences in organizational policies and structures, personality factors, interaction styles, cultural and ideological factors. In a workplace, conflict can create an environment filled with gossip and backstabbing, tension etc. From a practical perspective, the management of conditions that tend to induce a particular emotion can go a long way toward reducing CWB and enhancing OCB, and thereby improving both employee and organizational well-being.

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4. Nurturing Talent: Effective training processes and practices allow organizations to consistently hire and retain the right people and invest in and nurture them throughout their work life. Today's managers increasingly understand that a highly-skilled, knowledgeable workforce is critical to achieving business success while maintaining a competitive advantage.

### **WHY NURTURE TALENT**

- a) Contributes disproportionate value to the organization
- b) Have the easiest time finding other employment
- c) They produce as much as 10 times more than the average worker, while they often require less than two times the pay
- d) The more top performers you have, the greater the organization's productivity
- e) Enhance competitiveness

### **HOW TO NURTURE TALENT**

- a) Recognize - First, we have to recognize our natural talents, appropriate to the context being considered.
- b) Value - Secondly, we need to do some analysis to work out how these strengths add value to our organization.
- c) Reward, motivate and engage- Once you've identified your top talent, it's important to put programs in place to effectively reward, motivate and engage them, so you can retain them.
- d) Develop - We have a duty to ourselves and others to identify our strengths and develop them as much as we can in order to add more value
- e) Use - In most cases, when people have taken the time to recognize, value and develop their talents, they will naturally put them to good use. Furthermore, the better they become in their areas of strength, the more people notice and ask them to do more

### **Barriers to nurturing talent**

Managers are often failing to nurture the talent of their employees, losing out on innovation, skills and performance gains as a result. Part of the reason for this is;

- a) Talent is seen as a threat. There is a tendency to fear for our own positions when someone comes along who could potentially be our replacement.
- b) Lack of time often prevents talent from being properly nurtured.

## **EXIT PLANNING**

Exit planning or strategy is preparing to leave your job. The day to plan your exit is the first day you start a new job. Career progression is essential in any job – avoid ‘dead end’ jobs. Do not stay in a mismatched work environment where the job is no longer suitable for you. Where possible negotiate the terms of your departure with your employer. Do not lose face and do not ‘burn bridges’ – maintain cordial relationships with employers, bosses and colleagues

### Exit package

You must have a clear understanding of your exit pay upon termination of employment as you may use this to start a new career/business or to sustain you in-between jobs

### Exit interviews

For departing employees are conducted by organizations as part of their learning and improvement process

### Exit strategies

1. Search for a new job while you are still employed. It is difficult to look for a job if you are out of work.
2. Agree on a reasonable departure period. Give notice as stipulated in your contract when you accept a new job.
3. Ask your employer if you can work part-time or a reduced schedule while you look for a new job.
4. Transfer out of your current department if the company and culture are a good fit but your immediate environment is not.
5. Ask your manager to discuss an exit strategy with you. No matter the reason, if your job is not working out, perhaps your organization will work with you to pave your way out the door. No hard feelings; it just didn't work out.

## **MANAGER AS A COUNSELLOR**

Success as a manager depends upon your ability to get things done and reach your goals through your employees. At the same time, you need to lead, support, and develop your team members, and that can be a tough balancing act. Managers need to sometimes coach and sometimes counsel. A manager first identifies a problem that interferes with an employee's work performance. In such situations, the manager needs to switch from coaching to counselling mode. Think of this as a process that helps the employee define specifically what behaviour he or she needs to change in order to improve his or her performance or resolve a problem.

A good manager is both coach and counsellor, and does the following:

- Motivates employees to do good work;

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- Reinforces good performance;
- Encourages employees to stretch;
- Sets clear expectations;
- Provides positive feedback on an ongoing basis;
- provides constructive feedback on a timely basis;
- Acknowledges employees' progress toward their goals

### QUALITY MANAGEMENT

A management approach centred on quality, based on the participation of organization's people and aiming at long term success. This is achieved through customer satisfaction and benefits all members of the organization and society.

In other words, TQM is a philosophy for managing an organization in a way which enables it to meet stakeholder needs and expectations efficiently and effectively, without compromising ethical values. Total quality management can be summarized as a management system for a customer-focused organization that involves all employees in continual improvement. It uses strategy, data, and effective communications to integrate the quality discipline into the culture and activities of the organization.

### PRINCIPLES OF QUALITY MANAGEMENT

- a) Customer-focused. The customer ultimately determines the level of quality. No matter what an organization does to foster quality improvement
- b) Leadership - leaders establish unity of purpose, direction and the internal environment in which people can become fully involved in achieving the organization's objectives.
- c) Total employee involvement. Total employee commitment can only be obtained after fear has been driven from the workplace, when empowerment has occurred, and management has provided the proper environment.
- d) Process centred - a desired result is achieved more efficiently when related resources and activities are managed as a process.
- e) Integrated system approach to management - identifying, understanding and managing a system of interrelated processes for a given objective contributes to the effectiveness and efficiency of the organization
- f) Continual improvement - continual improvement is a permanent objective of an organization.

- g) Fact-based decision making. In order to know how well an organization is performing, data on performance measures are necessary. Effective decisions are based on the logical and intuitive analysis of data and information
- h) Mutually beneficial supplier relationships/Communication- mutually beneficial relationships between the organization and its suppliers enhance the ability of both organizations to create value

## LEARNING ORGANIZATION

Learning is a strategic resource which provides a firm with a competitive advantage in form of knowledge and skills. Learning means integrating new knowledge or mixing existing knowledge in different ways, which leads to newness and thus to innovation

### Elements of Organizational Learning

Templeton et al. (2002) proposed four inter-related elements of organizational learning:

- a) Knowledge acquisition,
- b) Information dissemination,
- c) Information interpretation
- d) organizational memory

Knowledge acquisition: Is the process by which knowledge is obtained.

Sources of knowledge include

- customer surveys
- research and development activities
- performance reviews
- scanning the organizational environment
- analyzing competitors' products
- internal and external networks
- employee training and development programs.

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### Information dissemination

Is processes by which information from different sources are shared, leading to new information or understandings. In this process, information is distributed through the organization which actually facilitates knowledge sharing among the employees. Provides an opportunity for organizations to learn from the experience of others

### Information interpretation

Is a process by which distributed information is given one or more commonly understood interpretations. This process involves organizational members conceptualizing the information that is distributed.

### Organizational memory

Is a means by which knowledge is stored for future use. Organizational memory is important to learning because without memory learning would have a short life due to employee turnover and the passage of time. Overall, organizational learning creates new knowledge and skills which are key strategic resources, which have the capacity to enhance firms' innovations and performance.

## MANAGING CHANGE

### Before Embarking on Change

- a) Align the change with the company's strategy
- b) Understand what you're likely to achieve
- c) Ensure executives committed to achieving change
- d) Verify there are sufficient resources
- a) Assess need for external help, find outside resources. "Change management is crucial to the success of any change effort."

### Concept of change

Change means making things different. Change refers to Transformation in operations that may or may not be imposed from above but are instrumental to organisational growth. Organizational change can be defined as a better way or system of combining different elements- knowledge, products, customer demands, markets. etc.. into a new and more productive whole. Change means movement, movement means friction, friction means conflict (Saul 1972). It is the management of this friction that forms the basis of successful management of change.

### Major Types of Change:

1. Planned Change
2. Unplanned Change

## **CHANGE MANAGEMENT**

### Change Process

It is vital to first appreciate how change occurs so as to manage it effectively. Various models & theories of the change process exist;

- a) Depression
- b) Experiment
- c) Decisions
- d) Integration

## **STAGES OF CHANGE**

1. Shock in response to the event which signals change – ‘I don’t believe it.’
2. Denial of the reality of the change – ‘It won’t affect me.’
3. Frustration and anger about the change. A tendency to blame, and a sense of injustice – ‘Why me? What have I done to deserve it?’
4. Depression & apathy – ‘I’m fed up. It’s not fair.’
5. Experimenting with new behaviour. As a result of the pain suffered in stage 4, a willingness to try something new – ‘I’ll give it a try.’
6. Accepting the reality of the change – ‘It’s not as bad as I thought it would be.’
7. Integrating the change into your life. Developing new attitudes and ways of behaving – ‘I never thought it would work.’

## **SOURCES OF CHANGE:**

- a) Competition from other groups/organizations
- b) Supervisor pressure
- c) Better raw materials



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- d) New technology
- e) Change of leadership
- f) Change in membership composition
- g) Organisational policies
- h) Change of organisational ownership, (for example privatisation in Uganda),
- i) Market outreach and demand of the service/product.
- j) Natural progression.
- k) globalization

### **CORPORATE FAILURES DUE TO RESISTANCE TO CHANGE**

- a) Blockbuster (1985 – 2010) – Home movie & video games rental
- b) Polaroid (1937 – 2001) & Kodak (1889-2012) – Cameras
- c) Toys R Us (1948 – 2017) – Toys retailer
- d) Pan Am (1927 – 1991) – Luxury airline
- e) Borders (1971 – 2011) – Book store
- f) Tower Records (1960 – 2004) – Music

### **CAUSES OF RESISTANCE TO CHANGE.**

- a) Self-interest & protecting status quo: individuals who have achieved status, privileged or self-esteem through effective use of an old system will often see new plans as a threat.
- b) Inadequate benefits & rewards: The what's in it for me syndrome.
- c) Fear of the unknown: people may be uncertain of their abilities to learn new skills, their aptitude with new systems or their ability to take on new roles. The risk of standing still is seen to be less than of moving forward.
- d) Differing perceptions: people may sincerely believe that the plan is wrong. They may view the situation from a different viewpoint or may have aspirations for themselves or the organisation that are fundamentally opposed to the plan
- e) Suspicion and low trust: some people may not trust the plan, or the people who have created it

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- f) Conservatism and attachment to old ways: organisations or people may simply be opposed to change. This can result from loss of touch with customers, from lack of exposure to better ways of doing things or from slowness of decision making.
- g) Politics: different interest groups may occur within the organisation, and the alliances involved may cause resistance to change.
- h) Limited mindsets: i.e. fixated mental models may inhibit/fail generating strategic options
- i) Poor decision making
- j) Lack of resources: limited resources available
- k) Inadequate competence: sometimes, change in organizations necessitates changes in skills, and some people will feel that they won't be able to make the transition very well.
- l) Misunderstanding about the need for change/when the reason for the change is unclear — If staff do not understand the need for change you can expect resistance. Especially from those who strongly believe the current way of doing things works well...and has done for twenty years!
- m) Temporary fad — When people believe that the change initiative is a temporary fad
- n) Not being consulted — Failure to involve all those who would be affected by change. If people are allowed to be part of the change, there is less resistance. People like to know what's going on, especially if their jobs may be affected. Informed employees tend to have higher levels of job satisfaction than uninformed employees.
- o) Poor communication — It's self-evident isn't it? When it comes to change management there's no such thing as too much communication
- p) Changes to routines — When we talk about comfort zones we're really referring to routines. We love them. They make us secure. So there's bound to be resistance whenever change requires us to do things differently.
- q) Exhaustion/Saturation — Don't mistake compliance for acceptance. People who are overwhelmed by continuous change resign themselves to it and go along with the flow. You have them in body, but you do not have their hearts. Motivation is low.

### **DEALING WITH RESISTANCE TO CHANGE**

The following strategies can be used to reduce resistance to change.

- a) Effective communication & Education

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- b) Gradual Method of introducing changes.
- c) Facilitation & Support (e.g. Guarantee job, counselling & other security)
- d) Coercion in form of use of authority, threats, intimidation etc
- e) Bribery/ Introduction of special rewards.
- f) Good Timing
- g) Manipulation & Co-option
- h) Involvement, agreement & participation
- i) Offer new, worthwhile experiences
- j) Be adaptable to new suggestions
- k) Convince opinion makers
- l) Pay the price for change
- m) Set the pace for change
- n) Play it simple- Simplicity is a virtue

### **STRATEGIES FOR IMPLEMENTING CHANGE IN ORGANISATIONS:**

- a) Create a shared vision and common direction: This should reflect the values of the company; the vision should include the rationale, the benefits and personal ramifications/consequences
- b) Develop a non-threatening and preferably participative implementation process: Skilfully present plans, make information readily available, explain the benefits for end users; start small and simple; go for quick wins, publicise & celebrate successes
- c) Support change 'champions' and 'agents': The change advocate role is critical to create a vision, motivate employees to embrace that vision and craft a structure to reward those who strive towards realisation of the vision
- d) Line up political sponsorship: Broad-based support is important (both formal and informal support). Identify target individuals and groups whose support is needed. Define the critical mass of support needed; Identify where each key player is on the continuum (from 'no commitment', 'may let it happen', 'help it happen' to 'make it happen')
- e) Draft an implementation plan: this plan maps out the resources required, timescales, and so on

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- f) Develop enabling structures: e.g. pilot tests, off-site workshops, training programmes, new reward systems and symbolic changes such as redesigning work spaces
- g) Create a sense of urgency: You have to create the right reason. It could be a crisis, real or manufactured. Get the graphs out that tell the story
- h) Reinforce and institutionalise change: It is important to reinforce the change, Reward those who take risks and incorporate the new behaviours. To sustain change, structures of the organization may need to be modified including policies and procedures. Create a culture where adaptation to change is the norm = become known as a learning organisation

### **Key Skills for Change Management**

- a) Political skills –Capacity to understand the organizational politics involved.
- b) Analytical skills: – Need to have clear insights of steps being taken to affect change and the possible resulting positive and negative outcome of change.
- c) People skills: – Need to consider to diverse dimensions involved i.e. organizational cultures, values, attitudes towards life and work, personalities, people’s priorities, the gender and sexual preferences etc..
- d) System skills - Organizations operate as systems and a systemic view needs to be considered when preparing for change in an organization.
- e) Business skills - Need to understand how business works i.e. the sources of resources used in the organization, the market opportunities, products and product development. customers, and customer relations.

## **TEAMWORK AND TEAM BUILDING**

What is a Team?

“A team is a small number of people, with complementary skills, who are committed to a common purpose, performance goals, and approach for which they are mutually accountable.” Working together to achieve common goals. People working together in a committed way to achieve a common goal or mission. The work is (usually) interdependent and team members share responsibility and hold themselves accountable for attaining the results.” Organizational and team goals take precedence over personal goals – there is no ‘I’ in team(work). An organization achieves a lot more when members work as a team than as individuals. The Soviet adage “From each according to his abilities, to each according to his needs” sums up teamwork. All members of the team must contribute to the best of their ability – do not leave things to the usual suspects. An organization must consciously undertake activities to build teamwork.

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### **Why Teams?**

Teamwork engenders trust and loyalty. Lawyers haven't traditionally worked in a team oriented way - there is need to change approach and strengthen teams .It's not just about the lawyers – it's about productivity. Marketing is now a vital function in law firms . The 80/20 rule and maximizing client lifetime value specialization and collaboration lead to greater satisfaction. Law firms can benefit tremendously by striving to establish a more collaborative work environment and emphasizing the importance of teamwork, both internally amongst colleagues and externally with clients.

“Coming together is a beginning. Keeping together is progress. Working together is success.” — Henry Ford

The reasons for forming teams are as follows;

- a) Teams are natural problem solving devices

A team setting opens up new communication lines. Because of the necessity of communication within a team, members encounter problems and challenges in early stages and are able to head them off with greater efficiency and success.

- b) Teams are collections of the organization's best assets

Each team member has specific talents. By combining individuals in team fashion, all of these talents are joined to work toward a common goal.

### **TEAMS IN LAW FIRMS**

There have been huge changes in legal practice in the last 15 years. While still a profession, things have shifted far more towards law firms being businesses. Law firms are run as corporate entities with most firms having a Managing Partner or Business Manager. Law firms have continued to grow in size and 'one man/woman' practices are now extremely rare. As such, law firms have begun to appreciate that the factors that influence business success in other industries apply equally to them – including the need for effective teamwork. Fundamental business concepts like marketing, branding, sales, and efficient operations, are now becoming paramount to a law firm's success. But one often overlooked aspect of running a successful business is teamwork. The legal profession is conservative and hierarchical with 'bosses' and 'subordinates' and many firms do not pay much attention to teamwork. Here's an analysis on the importance of teamwork in the modern law firm, and tips for how law firms can create a more team-oriented culture.

Note that; Teamwork is increasingly essential in today's law firms. The complex, international and integrative nature of legal work requires professionals to combine their specialized expertise in order to successfully serve the most attractive clients. Partners who collaborate realize the benefit of generating more sophisticated, innovative and lucrative work. They are able to develop synergies and have higher turnover of cases.

Note, while teamwork undoubtedly entails risks and coordination costs, these challenges can be mitigated by implementing appropriate measures. Lawyers who develop their own teamwork capabilities and network are likely to reap both intellectual and financial benefits

## KEY CHARACTERISTICS OF TEAMS

- a) Commitment to a common purpose and meeting performance goals
- b) Mutual accountability
- c) Trust and collaboration
- d) Commitment to a common approach
- e) Positive Synergy
- f) Complementary skills
- g) Small number – distinct from a mob
- h) Shared responsibility

## TYPES OF TEAMS

Teams are categorized in terms of four characteristics i.e.

- a) Purpose – Teams are categorized according to purpose

Problem solving teams

Product development

Re-engineering teams

Market development teams

- b) Structure – Teams divided according to their management i.e. Self – managed and supervised teams

Self –managed teams –assume responsibility of managing themselves

Supervised teams – under the management of a manager who is responsible for guiding the team in its operations and performance evaluation

- c) Duration – temporary or permanent teams

Temporary Teams – formed for a specified period e.g. task forces, project or problem solving teams.

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Permanent Teams- remain in existence as long as the organization is in operation e.g. functional department teams

**d) Membership** – include Functional, cross – functional and virtual teams

Functional teams – work teams composed of managers and subordinates in different functions e.g. Marketing, Accounting, Procurement, HRM etc..

Cross – Functional Teams – work teams in which individuals who are experts in various specialties or functions work together on various organizational tasks Virtual Teams- members do not meet on a face to face basis but rather use computer technology to tie together physically dispersed members to achieve a common goal

### **TEAM EFFECTIVENESS (BEHAVIOUR IN SUCCESSFUL /EFFECTIVE TEAMS)**

- a) Acceptance of Team goals: should be developed through a group process of team interaction & agreement in which each team member is willing to work toward achieving these goals.
- b) Acceptance of responsibility: team members actively participate in sharing of roles to facilitate the accomplishment of tasks and feelings of group togetherness.
- c) Feedback: freely given as a way of evaluating the team's performance and clarifying both feelings and interests of the team members. When feedback is given it is done with a desire to help the other person.
- d) Team decision making: involves a process that encourages active participation by all members.
- e) Sharing Information: Teams members have to share ideas and collaborate with each in order to enhance team performance
- f) Problem solving: discussing team issues, and critiquing team effectiveness are encouraged by all team members.
- g) Conflict: is not suppressed. Team members are allowed to express negative feelings and confrontation within the team which is managed and dealt with by team members. Dealing with and managing conflict is seen as a way to improve team performance.
- h) Team member resources: talents, skills, knowledge, and experiences are fully identified, recognized, and used whenever appropriate.
- i) Risk taking and creativity: are encouraged. When mistakes are made, they are treated as a source of learning rather than reasons for punishment.

### **THE STAGES OF TEAM FORMATION /DEVELOPMENT**

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Psychologist Bruce Tuckman first came up with the memorable words: Forming, Storming, Norming and Performing in 1965 to describe the path to high-performance that most teams follow. Later, he added a fifth stage that he called “adjourning” (and others often call “mourning” – it rhymes better!)

### Stages of Team Formation

- a) Stage I: Forming - Provide clear direction to establish the team’s purpose, setting goals, etc.,
- b) Stage II: Storming – Provide strong, hands-on leadership to keep people talking and task-focused
- c) Stage III: Norming – Codes of behaviour becomes established and an identifiable group culture emerges. People begin to enjoy each other’s company and appreciate each other’s contributions
- d) Stage IV: Performing – Teams that reach this stage achieve results easily and enjoyably. People work together well and can improve systems, solve problems and provide excellent customer service.
- e) Stage V: Adjourning – Temporary project team reaches this stage; celebrate their team’s achievements.

#### a) Forming

This is orientation stage and is usually fairly short and may only last for a single meeting at which people are introduced to one-another. The goal is stated, tasks identified and regulations regarding conduct and performance of tasks are agreed upon by team members.

#### b) Storming

- Interaction stage.
- As members interact, they start experiencing differences in perceptions, objectives and how they perform work.
- Cliques or factions form and there may be power struggles (Conflict develops among individuals and groups ).
- There can even emerge a rebellion against leaders which at times can fail further development of the team. Conflict resolution skills are important at this stage
- Stage of cohesion
- Agreement and consensus is largely formed within team (and they respond well to facilitation by leader).
- Roles and responsibilities are clear and accepted.
- Commitment and unity is strong
- The team may engage in fun and social activities.



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•The team discusses and develops its processes and working style. There is general respect for the leader and some of leadership is more shared by the team.

- c) Norming
- d) Performing
- e) Final stage

The team is more strategically aware - they know clearly what they are doing and why i.e. team is performing tasks. They have a shared vision and can stand on its own feet with no interference or participation from the leader. The team has a high degree of autonomy. Disagreements occur but now they are resolved within the team positively and necessary changes to processes and structure are made by the team.

- f) Adjourning

For temporary teams, this is the stage where the team's goals and tasks have been accomplished and wraps up activities with disbandment in mind. The team's performance shifts from high task performance to closure.

## **BUILDING EFFECTIVE TEAMS**

Done using Team Effective Model that contains four elements i.e.

- a) Work design
- b) Composition
- c) Context
- d) Process

Composition; involves the following features;

- Ability of members- to perform effectively i.e. a team requires different types of skills including technical, problem solving, decision making and good interpersonal skills. Right skill mix is crucial
- Personality – teams that rate high in average levels of emotional stability, agreeableness & self confidence tend to be more successful
- Size of team – most effective teams are neither too small or too big. Recommended number is between 5 & 12
- Roles and diversity – in a team members have different roles. Matching individual preferences with team roles increases the likelihood of team effectiveness
- Flexibility – in effective teams, one member can easily stand for the other & vice versa

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- Members' preference – during selection process, select members who prefer to work in a team setting

Context; Contains the following features

- Adequate resources – the organization should support the team with adequate resources e.g. timely information, appropriate staff and finances to achieve goals.
- Leadership – the team members should be allowed to select the appropriate leadership style to avoid conflicts
- Performance evaluation and reward system – in addition to their normal evaluation and rewards, management should consider team based appraisals and profit sharing to reinforce team effort & commitment

Process; Consists of the following features

- Common purpose – an effective team has a common & meaningful purpose that provides direction momentum & commitment for members.
- Specific goal – effective teams breakdown their common purpose into specific & clear goals. Clear goals facilitate communication which helps the team to focus on results unitedly.
- Team efficacy – team members should have confidence in themselves i.e. believe they can succeed. It motivates them to work harder.
- Conflict Levels – give room for some level of conflicts to improve team effectiveness. E.g. Task conflicts stimulate discussions and can lead to better team decisions.
- Social Loafing – tendency for individuals to expend less effort when working collectively than as an individual. Thus effective teams should have collective responsibility and accountability the team's tasks.

Teams initiate change

Often those at the top of the organization are challenged by what changes are necessary within an organization. Teams provide a valuable source of feedback.

### **How to help your team:**

- a) get acquainted and feel comfortable with their fellow members
- b) develop ground rules and norms for the team
- c) communicate and work cooperatively
- d) facilitate the sharing of information and expectations between members

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- e) begin trusting each other

### ROLES OF TEAM MEMBERS

- a) Clarity at the start helps to reduce friction- roles/ shared goals/ conflict resolution...
- b) Allows people to get credit for their achievements
- c) Clear responsibility and timelines for tasks avoids undue last-minute pressure
- d) Roles need to be shared where possible to avoid boredom and assist in retention

### FACTORS CRITICAL FOR STRONG TEAMS

- a) Team Goals: <sup>57</sup>

If you've spent more than a few months in the business world, you've likely heard of—and perhaps even made a few “SMART” goals. The acronym first appeared on the scene in a 1981 issue of *Management Review* and stands for – Specific, Measurable, Attainable, Relevant and Time-based. Those are all admirable and, yes, intelligent, qualities for a high-performing to-do list. And research shows SMART goals do help smooth the goal-setting process. But, in recent years, business leaders have begun to point out that SMART goals are often lacking in big-picture thinking or creative vision. “In a business context, SMART goals can be effective for those focusing on just boosting a number,” noted Pure Food Company founder Scott Christ for Entrepreneur.com. “But for grandiose goals—for anyone aspiring to do what he or she loves for a living, say—the SMART goal methodology has serious flaws. Christ instead recommends that for lofty, pie-in-the-sky achievements, (i.e., the kind a high-performance team might set) goals be heartfelt and focused on improvement – not just for the company but for the individuals behind the team effort.<sup>58</sup> Short-term and long-term goals are a prerequisite for inspiring good teamwork. Goals represent direction and allow team members to exercise a level of flexibility and creativity when determining the smartest way to reach their desired outcome.<sup>59</sup> Continuous reference to concrete team goals also ensures that everyone knows why the team exists and that all work within the team must ultimately contribute to the fulfilment of those goals.<sup>60</sup>

- b) Communicate openly and transparently<sup>61</sup>

Effective communication is the most important part of teamwork. It involves consistently updating each person and never assuming that everyone has the same information.

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<sup>57</sup> <https://www.knowledgedcity.com/blog/4-keys-high-performance-teams/>

<sup>58</sup> <https://www.knowledgedcity.com/blog/4-keys-high-performance-teams/>

<sup>59</sup> <https://deakinco.com/resource/the-five-elements-of-successful-teamwork/>

<sup>60</sup> Ibid

<sup>61</sup> Ibid

But good teamwork also requires sound listening skills. By listening to your colleagues you show them respect, which is an essential trust-building method. Offering encouragement also goes a long way when it comes to inspiring the best out of team members.<sup>62</sup>

- c) Establish a clear organisational purpose

It's impossible to meaningfully contribute to a greater task when you don't know what that task is.

Similarly to communication, there must be transparency regarding corporate purpose. Greater awareness of your company's core purpose will empower employees to instil this purpose into their work. This will in turn allow employees to harness greater independence when completing personal responsibilities while also taking a proactive approach to fulfilling their team's core purpose.

- d) Promote ownership and accountability

Ownership is key when ensuring that each team member feels as if they belong within the greater team. Without accountability, employees can feel lost in the crowd and undervalued in their role.

Blame culture is detrimental to effective teamwork. Role clarification and open communication can help employees not only understand their responsibilities, but also how their role fits into the broader picture. This is valuable when it comes to promoting ownership and ensuring that accountability is continuously upheld through constructive self-management skills.<sup>63</sup>

- e) Delegate tasks based on strengths<sup>64</sup>

Teams that work well together understand the strengths and weaknesses of each team member. One of the benefits of good teamwork is that team leaders and members are adept at identifying all aspects of a project and allocating tasks to the most appropriate team members. This boosts productivity and ensures that team members are valued in how they contribute to the broader project.

- f) Promote efficiency and avoid micromanagement<sup>65</sup>

A strong and cohesive team develops systems that allow them to collaborate efficiently to complete tasks in a timely manner. Through working together, colleagues will be aware of their own capabilities and the capabilities of the group in general, and can organise the workload accordingly.

- g) Support employees in building team cohesion

All workplaces provide challenges, but having a strong team environment in place can act as a support mechanism for staff members. They can help each other improve their own performance as well as working together toward improving their professional development. Building bonds on trust and reliance on each other

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<sup>62</sup> <https://deakinco.com/resource/the-five-elements-of-successful-teamwork/>

<sup>63</sup> <https://deakinco.com/resource/the-five-elements-of-successful-teamwork/>

<sup>64</sup> Ibid

<sup>65</sup> Ibid

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can be extremely important when facing a particularly difficult challenge or if the group is forced to deal with the loss of a team member while continuing to maintain productivity.

### h) Create a culture of ideas and innovation

When a team works well together, colleagues feel more comfortable offering suggestions and ideas. A respectful and trusting team environment will not only enable colleagues to think more creatively, but will lead to more productive and collaborative brainstorming sessions.

### i) Reward teams for taking risks<sup>66</sup>

Safe risks can be extremely valuable to overall team success and enhancing employee innovation. To create an environment that encourages healthy risk taking, it's important to first clarify what smart risks are and ensure that employees understand they will not be judged or punished for taking risks – even if they don't turn out how they expected them to.

In addition to leading by example, praising team members for taking healthy risks will also contribute to a more innovative workplace culture that drives effective teamwork.

### j) Make trust an essential value<sup>67</sup>

In order to create an innovative and creative workplace, trust must be continuously prioritised within teams. Encouraging honesty and open communication is critical when engaging with team members and strengthening collaborative skills.

Trust can be further developed through:

- Providing opportunities for relationships amongst team members to develop naturally
- Sharing success stories and openly congratulating team members for their achievements
- Creating an accountability flowchart and clearly defining roles
- Encouraging autonomy
- Avoiding micromanagement<sup>68</sup>

## BASIC TEAM SKILLS

The following features are fundamental to good teamwork:

- a) trust: making sure you meet all commitments and maintain confidentiality when required

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<sup>66</sup> <https://deakinco.com/resource/the-five-elements-of-successful-teamwork/>

<sup>67</sup> Ibid

<sup>68</sup> <https://deakinco.com/resource/the-five-elements-of-successful-teamwork/>

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- b) coaching: using your skills, knowledge and experience to assist others or ask for help
- c) sharing information: to assist others do their job
- d) flexibility: show a willingness to cooperate and help others when possible
- e) good manners: doing small, simple things, e.g. thanking colleagues for their help

### CHARACTERISTICS OF EFFECTIVE TEAMS

1. The atmosphere tends to be informal, comfortable, relaxed.
2. There is a lot of discussion in which everyone participates – but all remain focused on the group task.
3. The task of the team is well understood and accepted by the members. The team is instrumental in defining the nature of the task and is committed to it – i.e., the team has ownership of it.<sup>69</sup>
4. The members listen to each other. Every idea is given a hearing. Team members are not afraid of looking foolish by putting forward a creative or unusual thought.
5. There is disagreement. Disagreements are not suppressed or overridden by premature group action. The reasons are carefully examined, and the group seeks to resolve them rather than to dominate the dissenter.
6. Most decisions are reached by consensus in which it is clear that everybody is in general agreement.
7. Criticism is frequent, frank and relatively comfortable. There is little evidence of personal attack – either open or hidden.
8. People are free in expressing their feelings as well as their ideas both on problems and on the team's operation.<sup>70</sup>
9. When action is taken, clear commitments are made and accepted.
10. The leader of the team does not dominate it nor do the team.<sup>71</sup>

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<sup>69</sup><https://www.google.com/url?sa=i&rct=j&q=&esrc=s&source=web&cd=&cad=rja&uact=8&ved=0CAMQw7AJahcKEwi41bHF1sT8AhUAAAAAHQAAAAAAQAw&url=https%3A%2F%2Fwww.ebookbou.edu.bd%2FBooks%2FText%2FSARD%2FDYDW%2Fmodule07.pdf&psig=AOvVaw3ZZwZ4S5r4yWaN1P0FiU8y&cust=1673701420517670>

<sup>70</sup> Ibid

<sup>71</sup><https://www.google.com/url?sa=i&rct=j&q=&esrc=s&source=web&cd=&cad=rja&uact=8&ved=0CAMQw7AJahcKEwi41bHF1sT8AhUAAAAAHQAAAAAAQAw&url=https%3A%2F%2Fwww.ebookbou.edu.bd%2FBooks%2FText%2FSARD%2FDYDW%2Fmodule07.pdf&psig=AOvVaw3ZZwZ4S5r4yWaN1P0FiU8y&cust=1673701420517670>

## WHY TEAMS FAIL

- a) Lack Of Clear Purpose & Goals - Without clear purpose and goals, the team will falter. Not knowing what to accomplish and why it is important is a major reason for lack of performance.
- b) Unsure Of What Requires A Team Effort - Not every decision or action requires a team; some are best accomplished by individuals. Team action is required when the result calls for multiple skills and perspectives and for a common goal.
- c) Lack Of Accountability - The very definition of a team is one where mutual accountability for outcomes is a given. Effective teams hold themselves and each other accountable for commitments made and results.
- d) Inadequate resources: A team must have sufficient human and material resources to accomplish set tasks.
- e) Lack Of Effective Or Shared Leadership - Applying leader behaviours that do not meet the developmental level of the team impacts both productivity and morale. Every team needs a leader, but as the team develops leadership needs to be shared. You will never have a high performing team if the leader does not give up control.
- f) Lack Of Trust Among Team Members - Teams are trust- based systems. The lack of trust leads to poor communication and withholding of information, which is a barrier to relationships and innovation.
- g) Inability To Deal With Conflict - Not dealing with conflict will cause productivity and morale to come to a standstill or worse. Rather than being seen as differences, it can become a struggle for control. If dealt with correctly can be the source of innovation and deepened relationships.
- h) Poor planning: Team tasks are executed best with good planning.
- i) Ineffective Problem-Solving Skills - The strength of the team lies in its ability to creatively and effectively deal with challenges. Without this skill set (which thrives on different perspectives), it will not reach high performance.
- j) Lack Of Focus On Creativity & Excellence - Creativity and excellence cannot be taken for granted but ideally written right into the values and norms of the team. Continual improvement is applauded and honoured. Team members should be allowed to take calculated risks. If mistakes occur, they are treated as learning opportunities.

## EMOTIONAL INTELLIGENCE

Emotional Intelligence (EQ or EI) is a term created by two researchers – Peter Salavoy and John Mayer – and popularized by Dan Goleman in his 1996 book, he defines EI as the ability to: Recognize, understand and manage our own emotions, recognize, understand and influence the emotions of others.<sup>72</sup>

In practical terms, this means being aware that emotions can drive our behaviour and impact people (positively and negatively), and learning how to manage those emotions – both our own and others – especially when we are under pressure

### What is Emotional Intelligence?

Bar-on (1997) defined EI as “an array of non-cognitive capabilities, competencies, and skills that influence one’s ability to succeed in coping with environmental demands and pressures”

#### Fundamental Questions

1. What emotional resources do managers/leaders need to thrive amidst chaos and turbulent change?
2. How do managers/leaders create an emotional organizational climate that fosters creative innovations, change, performance, or lasting relationships? Sylvia Aarakit- Management skills 2019

Nevertheless, we still tend to use the old language to describe management: bold, brave, tough, a strong sense of purpose and resolve. These Attributes do not fit today’s needs

Today’s workforce does not accept the autocratic style often adopted by managers following historical models of management leadership. Management has to match a growing sense of democracy and independence in the workforce. Employees now have far more options and choices than the foot soldiers of yesterday Managers now need to manage and lead an empowered workforce and go beyond the consultative, co-operative and democratic styles of today. These new demands include:

- a) Consultation and involvement
- b) Autonomy And Freedom
- c) Inclusion And Team Spirit

Remember Emotional intelligence is not about being nice all the time. It is about being aware of your feelings, and those of others.

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<sup>72</sup>  
<https://www.google.com/url?sa=i&rct=j&q=&esrc=s&source=web&cd=&cad=rja&uact=8&ved=0CAQQw7AJahcKEwiI74CLrPn8AhUAAAAAHQAAAAQAw&url=https%3A%2F%2Fwww.cu.edu%2Fsites%2Fdefault%2Ffiles%2FEI%2520Participant%2520Guide%2520Updated%25202015.pdf&psig=AOvVaw2T1f87UwLkp2tKFJg4RV6&cust=1675513425910388>



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Emotional intelligence is not about being emotional. It is about being smart with your emotions. It is no longer enough to manage by virtue of power alone. Therefore, Emotional Intelligence is essential in today's management models

### The Five Essential Competencies of Emotional Intelligence

- a) **Self-Awareness:** People with high emotional intelligence are usually very self-aware. They understand their emotions, and because of this, they don't let their feelings rule them. They're confident – because they trust their intuition and don't let their emotions get out of control. They're also willing to take an honest look at themselves. They know their strengths and weaknesses, and they work on these areas so they can perform better. Many people believe that this self-awareness is the most important part of emotional intelligence.<sup>73</sup>
- b) **Self-Regulation:** This is the ability to control emotions and impulses. People who self-regulate typically don't allow themselves to become too angry or jealous, and they don't make impulsive, careless decisions. They think before they act. Characteristics of self-regulation are thoughtfulness, comfort with change, integrity, and the ability to say no.
- c) **Self-Motivation :** People with a high degree of emotional intelligence are usually motivated. They're willing to defer immediate results for long-term success. They're highly productive, love a challenge, and are very effective in whatever they do.<sup>74</sup>
- d) **Empathy :** This is perhaps the second-most important element of emotional intelligence. Empathy is the ability to identify with and understand the wants, needs, and viewpoints of those around you. People with empathy are good at recognizing the feelings of others, even when those feelings may not be obvious. As a result, empathetic people are usually excellent at managing relationships, listening, and relating to others. They avoid stereotyping and judging too quickly, and they live their lives in a very open, honest way.<sup>75</sup>
- e) **Social Skills :** It's usually easy to talk to and like people with good social skills, another sign of high emotional intelligence. Those with strong social skills are typically team players. Rather than focus on their own success first, they help others develop and shine. They can manage disputes, are excellent communicators, and are masters at building and maintaining relationships.<sup>76</sup>

## PERSONAL BENEFITS OF EMOTIONAL INTELLIGENCE

You navigate social situations with ease: For many of us, new social contexts can generate a certain degree of anxiety. It's absolutely normal to want to feel accepted within a group and enjoy a pleasant social experience. The only problem is that sometimes, we're so preoccupied with how others see us that social interactions

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<sup>73</sup> <https://www.mindtools.com/ab4u682/emotional-intelligence>

<sup>74</sup> Ibid

<sup>75</sup> <https://www.mindtools.com/ab4u682/emotional-intelligence>

<sup>76</sup> Ibid

become these awkward encounters where we desperately try to keep anxiety under control and act ‘normal.’ Fortunately, emotional intelligence may hold the solution. It appears that people with high emotional intelligence experience less anxiety in social situations. In other words, they can easily adapt to new social contexts and manage to navigate interpersonal relationships successfully.<sup>77</sup>

- a) Stronger personal relationships: By understanding your emotions and how to control them, you're better able to express how you feel and understand how others are feeling. This allows you to communicate more effectively and forge stronger relationships, both at work and in your personal life.<sup>78</sup>
- b) More resilient: In essence, emotional resilience is the ability to tolerate painful and uncomfortable emotions and push through with your goals, regardless of the discomfort you might experience along the way. Most experts agree that high emotional intelligence goes hand in hand with resilience. In other words, people who know how to navigate their emotional spectrum can keep stress under control, work well under pressure, and overcome the frustration that life sometimes forces us to endure. All and all, emotional resilience is one of the ingredients of a happier and healthier life.<sup>79</sup>
- c) Better health: If you're unable to manage your emotions, you are probably not managing your stress either. This can lead to serious health problems. Uncontrolled stress raises blood pressure, suppresses the immune system, increases the risk of heart attacks and strokes, contributes to infertility, and speeds up the aging process. The first step to improving emotional intelligence is to learn how to manage stress.<sup>80</sup>

## PROFESSIONAL BENEFITS OF EMOTIONAL INTELLIGENCE

- a) Effective leadership skills
- b) Improved communication
- c) Less workplace conflict
- d) Better problem solving skills
- e) Increased likelihood of promotion

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<sup>77</sup> <https://www.happierhuman.com/benefits-emotional-intelligence/>

<sup>78</sup> <https://www.helpguide.org/articles/mental-health/emotional-intelligence-eq.htm>

<sup>79</sup> <https://www.happierhuman.com/benefits-emotional-intelligence/>

<sup>80</sup> <https://www.helpguide.org/articles/mental-health/emotional-intelligence-eq.htm>

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### SELF UNDERSTANDING

#### Self Understanding: Self-Assessment

- a) Develop clarity of personal values, purpose and vision
- b) Develop and execute a personal strategy
- c) Demonstrate authenticity through behavioural alignment with values and vision
- d) Taking accountability for personal and leadership actions

#### Self Understanding: Resiliency

- a) Willingness to jump in and get things started
- b) Seek opportunities for performance improvement and development
- c) Build off of others ideas for the benefit of the decision
- d) Maintain appropriate, empowered attitude
- e) Persistence in managing and overcoming adversity
- f) Act proactively in seeking new opportunities
- g) Prioritization, time management

#### Working With Others: Interpersonal & Relationship Skills

- a) Understand and appreciate diversity of perspective and style
- b) Participate and contribute fully as a team member
- c) Demonstrate empathy and understanding
- d) Build trust and demonstrate trustworthiness

#### Working With Others: Communication Skills:

- a) Understand and adapt to your audience - helping others learn
- b) Express intention clearly and concisely in written communications
- c) Build collaboration and clearly articulate intention in verbal communications
- d) Formal presentation skills
- e) Listen for understanding

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- f) Manage flow of communication/information

### Working With Others: Employee Development (Coach & Motivate)

- a) Motivating employees to high performance
- b) Coaching for development and improved performance
- c) Manage with appreciation/respect for diversity of individual values and needs
- d) Delegate tasks as needed and with awareness of employee development opportunities
- e) Select appropriate staff to fulfill specific project needs and responsibilities

### Alignment: Customer Orientation

- a) Understand and apply customer needs and expectations
- b) Gather customer requirements and input
- c) Partner with customer in gathering requirements, maintaining communication flow and managing work
- d) Set and monitor performance standards

### Alignment: Strategic Business Acumen

- a) Demonstrate ability to ethically build support for a perspective you feel strongly about
- b) Holistic view - think in terms of the entire system and the effects and consequences of actions and decisions
- c) Operate with an awareness of marketplace competition and general landscape of related business arenas
- d) General business acumen - functions of strategic planning, finance, marketing, manufacturing, R&D, etc.

### Alignment: Project Leadership

- a) Set, communicate and monitor milestones and objectives
- b) Gain and maintain buy in from sponsors and customers
- c) Prioritize and allocate resources
- d) Manage multiple, potentially conflicting priorities across various/diverse disciplines
- e) Maintain an effective, interactive and productive team culture

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- f) Manage budget and project progress
- g) Manage risk versus reward and ROI equations
- h) Balance established standards with need for exceptions in decision-making
- i) Make timely decisions in alignment with customer and business pace

### Working With Others: Creating and Actualizing Vision

- a) Create a clear and inspirational vision of the desired outcome
- b) Align the vision with Broader organizational strategies
- c) Translate the vision into manageable action steps
- d) Communicate vision to enrol/enlist staff, sponsors and customers
- e) Influence and Evangelize (sales, negotiation)
- f) Gather appropriate input
- g) Understand individual motivators and decision-making styles and utilize to enrol others
- h) Facilitate win/win solutions

### Alignment: Create, Support and Manage Change

- Improvement Initiatives (three levels: managing your own transition / transformation, managing a corporate (external) change initiative, coaching others through transition)
- Identify and implement appropriate change initiatives/efforts
- Promote and build support for change initiatives
- Understand cost/benefit and ROI of change initiatives
- Manage transition with employees - guiding and supporting the change process
- Support staff in navigating transitional process/challenges through organizational change
- Demonstrate and build resilience in the face of change

## THE 10 MANAGEMENT COMPETENCIES SELF-AWARENESS.

### Practicing Self-Awareness:

- Awareness of our own emotional states is the foundation of all the E.I. skills.
- Learn to “tune-in” to your emotions – they can give you valid information about your responses to stressful situations.
- Recognize the importance of emotions even in “technical” fields.

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### Practicing Self-Regulation:

- Accept responsibility for choosing your own emotional responses.
- Learn to “reframe” stressful situations into ones that are challenging.
- Be aware of, and learn to manage, your own emotional “triggers.”

### Practicing Self- Motivation

- Recognize that emotions affect your performance.
- Identify your “explanatory style.” When a setback strikes, resist asking “what’s wrong with me?” Instead, ask “what can I fix?”
- Work to achieve your “flow state,” being in the moment with work tasks.
- Realize that emotions impact such measurable goals as productivity and safety.
- Empathy means recognizing, and responding appropriately to, the emotions of others.
- By expressing empathy, you also create empathy in others.
- Influence and persuade others.
- Build consensus and support for team goals.
- Motivate and inspire yourself and others to achieve those goals.

### Character

- Integrity
- Maturity
- Abundance Mentality

### Competence

- Technical
- Conceptual
- Interdependency
- Judgment
- Wisdom

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### Build trust and demonstrate trustworthiness (Emotional Bank Account)

- Seek First to Understand
- Keeping Promises
- Honesty, Openness
- Kindnesses, Courtesies
- Win-Win or No Deal Thinking

### Clarifying Expectations

- Loyalty to the Absent
- Apologies
- Receiving Feedback and Giving “I” Messages
- Seek First To Be Understood
- Breaking Promises
- Smooth Manipulation
- Unkindness, Discourtesies
- Win-Lose or Lose-Win Thinking
- Violating Expectations
- Disloyalty, Duplicity
- Pride, Conceit, Arrogance
- Not Receiving Feedback and Giving “You” Messages

**Factors of Emotional Intelligence**

- Intra-Personal
- Emotional Self-Awareness
- Assertiveness
- Self-Regard
- Self -Actualization
- Independence
- Inter-Personal
- Interpersonal Relationship
- Empathy
- Social Responsibility
- Adaptability
- Problem Solving
- Flexibility
- Reality Testing
- Stress Management
- Stress Tolerance
- Impulse Control
- General Mood
- Optimism
- Happiness



## TIME MANAGEMENT

### Definition of Time

Time has several definitions:

- A non-spatial continuum in which events occur in apparently irreversible succession from the past through the present to the future.
- An interval separating two points on this continuum; a duration: a long time since the last war; passed the time reading.
- A number, as of years, days, or minutes, representing such an interval: ran the course in a time just under four minutes.
- A similar number representing a specific point on this continuum, reckoned in hours and minutes: checked her watch and recorded the time, 6:17A.M.
- A system by which such intervals are measured, or such numbers are reckoned: solar time.
- An interval, especially a span of years, marked by similar events, conditions, or phenomena; an era. Often used in the plural: hard times; a time of troubles.
- The present with respect to prevailing conditions and trends: You must change with the times.
- Time Management refers to managing time effectively so that the right time is allocated to the right activity.<sup>81</sup>
- Effective time management allows individuals to assign specific time slots to activities as per their importance.<sup>82</sup>
- Time Management refers to making the best use of time as time is always limited.<sup>83</sup>

### Accuracy of Time Keeping

Time can be measured with varying degrees of accuracy from a normal wrist watch to an atomic clock. An atomic clock is the most accurate measure of time using electronic microwave frequencies by calculating the number of times an atom vibrates per second. The accuracy with which you measure time depends on the purpose for which you need to calculate time.

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<sup>81</sup> <https://www.managementstudyguide.com/time-management.htm>

<sup>82</sup> Ibid

<sup>83</sup> Ibid

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Scientists require to know time in 1000ths of seconds. A typical western citizen needs to know time in minutes. A typical rural dweller needs to know time in half hour intervals

### **Characteristics of Time**

- Time is inelastic –it cannot be expanded nor reduced. 1 hour will always have 60 minutes.
- Uniformly allocated. Everyone has the same number of hours in any given day.
- Irreversible. Time moves forward and lost time will never be recovered.
- Infinite universally but finite individually. You don't know how long you will be on this earth but you know it will not be forever.

### **Sayings about Time**

- “Time and tide wait for no man [or woman to be politically correct]”
- Procrastination is the thief of time”
- “Time lost will never be replaced”
- “There is a time for everything”
- “Time flies”
- “There is a time for everything”
- “Men talk of killing time while time slowly kills them”
- “Time is money”
- “Time is what we want most. But what we use worst”
- “Time moves in one direction. Memory in another.”
- “If you don't have time to do it right, you'll not have time to do it over”.
- “Work expands to fill time available for its completion” –twentieth-century British scholar C. Northcote Parkinson
- People have a tendency to take up all the time (and more) that is allocated for completing a task.
- An assignment can be completed in 3 weeks or 6 weeks without any substantial variation in quality
- A good manager needs to know the minimum time required for completing a task without compromising quality

### **What is Time Management?**

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Time management” is the process of organizing and planning how to divide ones time between specific activities and competing demands. Managing times requires conscious control over the amount of time spent on different activities so as to achieve maximum effectiveness. Good time management enables a manager to work smarter –not harder –so that you get more done in less time, even when time is tight and pressures are high. On the other hand failing to manage time limits effectiveness and causes stress. Being busy does not mean being effective –it might simply mean that you are continuously running around in circles!

### **Why Keep Time?**<sup>84</sup>

Time Management refers to making the best possible use of available time. Managing time well enables an individual to do the right thing at the right time. Time Management plays a pivotal role in one’s personal as well as professional life.

Let us go through some benefits of Time Management:

- a) **Time Management makes an individual punctual and disciplined.**<sup>85</sup> One learns to work when it is actually required as a result of effective time management. To make the judicious use of time, individuals should prepare a “TASK PLAN“ or a “TO DO“ List at the start of the day to jot down activities which need to be done in a particular day as per their importance and urgency against the specific time slots assigned to each activity. A Task Plan gives individuals a sense of direction at the workplace. An individual knows how his day looks like and eventually works accordingly leading to an increased output.
- b) **One becomes more organized as a result of effective Time Management.**<sup>86</sup> Keeping the things at their proper places minimizes the time which goes on unnecessary searching of documents, important files, folders, stationery items and so on. For better time management, individuals keep their workstations, study zones, cubicles, meeting areas clean and organized. People learn to manage things well as a result of Time Management.
- c) **Effective Time Management boosts an individual’s morale and makes him confident.**<sup>87</sup> As a result of Time Management, individuals accomplish tasks within the stipulated time frame, making them popular in their organization as well as amongst their peers. People who understand the value of time are the ones who manage to stand apart from the crowd. Individuals who finish off work on time are looked up to by others and are always the centre of attention everywhere.
- d) **Individuals who stick to a time plan are the ones who realize their goals and objectives within the shortest possible time span.** Managing time effectively helps employees to meet targets way ahead of deadlines and finish off task just when it is required.

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<sup>84</sup> <https://www.managementstudyguide.com/time-management-benefits.htm>

<sup>85</sup> <https://www.managementstudyguide.com/time-management-benefits.htm>

<sup>86</sup> Ibid

<sup>87</sup> Ibid

- e) Effective Time Management helps an employee to reach the pinnacle of success quickly and stay firm at the top for a longer duration. An employee who works just for the sake of working fails to create an impression and is never taken seriously at work. Effective time management plays a pivotal role in increasing an individual's productivity. Output increases substantially when people manage their time well.<sup>88</sup>
- f) **Better Time Management helps in better planning and eventually better forecasting.** Individuals learn to plan things well and know where exactly they stand five years from now.
- g) **Research says that individuals who accomplish tasks on time are less prone to stress and anxiety.** Remember there is no point in wasting time and cribbing later. Finish off pending work on time and then you would have ample time for your friends, relatives and family members.
- h) **Time Management enables an individual to prioritize tasks and activities at workplace.** It is foolish to stay overburdened. Do not accept anything and everything that comes your way.
- i) Time Management helps an individual to adopt a planned approach in life.<sup>89</sup>

#### Time management techniques <sup>90</sup>

- **Set your Priorities.** Know what all needs to be done on an urgent basis. Prepare a "TO DO" List or a "Task Plan" to jot down tasks you need to complete against the time slot assigned to each activity. High Priority Tasks must be written on top followed by tasks which can be done a little later. Make sure you stick to your Task List.
- **Make sure you finish your assignments within the stipulated time frame.** Tick the tasks you have already finished. Treat yourself with a chocolate if you finish your assignments ahead of deadlines.<sup>91</sup>
- **Understand the difference between urgent and important work.** Manage your work well. Do not begin your day with something which is not so important and can be done a little later. First finish off what all is urgent and important. Do not wait for your Boss's reminders.
- **Stay focused.** Do not leave your work station if some urgent work needs to be done. Going for strolls in the middle of an urgent work breaks continuity and an individual tends to lose his focus. Individuals who kill time at work find it difficult to survive workplace stress.<sup>92</sup>
- **Do include time for your tea breaks, net surfing, personal calls and so on in your daily schedule.** It is important. Human being is not a machine who can work at a stretch for eight to nine

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<sup>88</sup> Ibid

<sup>89</sup> <https://www.managementstudyguide.com/time-management-benefits.htm>

<sup>90</sup> Ibid

<sup>91</sup> Ibid

<sup>92</sup> <https://www.managementstudyguide.com/time-management-techniques.htm>

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hours. Assign half an hour to forty five minutes to check updates on social networking sites, call your friends or family or go for smoke breaks etc.

- **Set realistic and achievable targets for yourself.** Know what you need to achieve and in what duration? Do not lie to yourself. Assigning one hour to a task which you yourself know would require much more time does not make sense.
- **Do not overburden yourself.** Say a firm no to your boss if you feel you would not be able to complete a certain assignment within the assigned deadline. Don't worry, he will not feel bad. Probably he can assign the same to any of your fellow workers. Accept tasks which you are really confident about.
- **Be disciplined and punctual.** Avoid taking unnecessary leaves from work unless there is an emergency. Reach work on time as it helps you to plan your day better.<sup>93</sup>
- **Keep things at their proper places.** Files must be kept at their respective drawers. Staple important documents and put them in a proper folder. Learn to be a little more organized. It will save your time which goes on unnecessary searching.
- **Do not treat your organization as a mere source of money.** Change your attitude. Avoid playing games on computer or cell phones during office hours. It is unprofessional. Do not work only when your boss is around. Taking ownership of work pays you in the long run.
- **Develop the habit of using an organizer.** It helps you plan things better. Keep a notepad and a pen handy. Do not write contact numbers or email ids on loose papers. You will waste half of your time searching them. Manage your emails. Create separate folders for each client. Do not clutter your desktop.<sup>94</sup>

### Time management skills

The judicious use of time by an individual to succeed in all aspects of life refers to Time Management. Time Management not only helps individuals to make the best use of time but also ensures successful accomplishment of tasks within the stipulated time frame.<sup>95</sup>

It is essential to do the right thing at the right time to earn respect at work. People who do not value time fail to make a mark and are never taken seriously.

Let us go through some **skills necessary for effective Time Management:**

#### 1. Stay Organized<sup>96</sup>

- The workstation must be kept clean and organized.

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<sup>93</sup> Ibid

<sup>94</sup> Ibid

<sup>95</sup> Ibid

<sup>96</sup> <https://www.managementstudyguide.com/time-management-benefits.htm>

- Keeping important files organized helps you retrieve them immediately and thus saves time which goes on unnecessary searching. Staple important documents together.
- Do not keep stacks of files and heaps of paper on your desk. Throw whatever you don't need.
- Keep stationery items and your personal belongings like cell phone, car keys, wallet at their proper places.
- Develop the habit of using an organizer. Plan your day well in advance.
- Never write on loose papers. Keep a notepad and pen handy.

## **2. Learn to Prioritize<sup>97</sup>**

- Set your priorities. Do not work just for the sake of working.
- Prepare a "Task Plan" or a "To Do" List the moment you settle down for work. Jot down all the activities you wish to do in a single day as per importance and urgency.
- High priority tasks must be attended to immediately. Do not start your day with something which does not require your immediate attention.
- Tick off completed tasks. It gives you a sense of relief and satisfaction.
- An employee must understand the difference between high and low priority tasks and also between important and urgent work.
- Do not indulge in irrelevant activities. You will waste your entire day and the output would be zero.
- Be clear about your roles and responsibilities at the workplace.

## **3. Be Punctual and Disciplined<sup>98</sup>**

- Being punctual helps you complete tasks way ahead of deadline.
- Avoid taking too many leaves from work. Such an attitude is completely unprofessional.
- Make sure you are there at your desk five minutes before your actual time.
- Strive hard to complete tasks on time. Do not keep assignments pending and wait for the last minute.

## **4. Take Ownership of work**

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<sup>97</sup> Ibid

<sup>98</sup> Ibid

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- Do not work only when your boss is around. Work for yourself. The dedication has to come from within.
- Be responsible for your work and learn to accept your mistakes.
- If you have accepted something, then it becomes your responsibility to complete it within the allotted time slot.

### 5. Be a little Diplomatic<sup>99</sup>

- Do not accept everything which comes your way. A polite “NO” in the beginning will save your reputation later.
- The employees must be delegated responsibilities as per their specialization and background. This way they take more interest and eventually finish work on time.

### 6. More Focused<sup>100</sup>

- Be a little focused and concentrate on work. Do not waste time by loitering and gossiping around.
- Do not take long personal calls at work. Finish off work and leave for the day on time. You will have ample time to catch up with your friends or log on to social networking sites. Playing games while you are at work is something which is not expected out of a professional.

### 7. Be reasonable<sup>101</sup>

- No individual can work for the whole day. Do include some time in your daily schedule to speak to your team member sitting next to you.
- Do not over burden yourself.

## Time Management in Corporates

### Need and its Importance

Time Management refers to making the best possible use of time and doing the right thing at the right time.

Managing time well plays a pivotal role in finishing off tasks within the stipulated time frame and also increases productivity of an individual.

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<sup>99</sup> <https://www.managementstudyguide.com/time-management-benefits.htm>

<sup>100</sup> Ibid

<sup>101</sup> Ibid

Employees must learn to manage time well at the workplace to achieve targets ahead of deadline and make a mark of their own. One who understands the value of time is never overburdened and enjoys each and every moment to the fullest.

Why Time Management is Important in Corporates?

- **Every organization works on deadlines.** Time Management helps individuals to finish work within the assigned time and stay stress free and relaxed through out the day. Time Management helps you plan specific time slots for all your day to day tasks at workplace.
- **Time Management helps an individual to prioritize things.** It is important for an employee to understand what is important and urgent at the moment. Staying overburdened at work leads to frustration and eventually one loses interest in work. You can't do anything and everything. Pick up all that is important and urgent at the start of the day and finish it off first before starting with something which can be done a little later. Know what is important for you. Allocate specific time slots to activities as per their relevance and make sure you stick to the same.
- **Effective Time Management makes you a favourite amongst your superiors, clients as well as fellow workers.** Do not keep work pending from your end. Finish off tasks as and when required. Ignoring critical issues is pointless. You have to do it in any case. Discuss with your co workers or immediate reporting boss and find out a solution. Keeping a check on your time helps you complete task just when it is needed.
- **Managing time well helps an employee to plan his career path effectively.** Doing things on time helps you reach the top of your career within the shortest possible time frame. Employees who just work for the sake of doing work and do not pay attention to deadlines are never taken seriously at the workplace. They are the ones who always crib and complain of excessive work load.
- **Time Management makes you an organized individual.** One needs to keep things at their respective places. Avoid keeping heaps of paper and stacks of files on your desk. Not only it gives a cluttered look to your workstation but also wastes half of your time in searching important documents, files, folders and so on. Individuals should prefer writing on notepads instead of loose papers.
- **Effective Time Management helps an individual to identify the time wasters at the workplace.** It is foolish to waste time on unproductive things which yield no results. No one expects you to work at a stretch for the whole day. Assign some time in your daily schedule to check updates on social networking sites or calling up your friends but do know where to draw the line. Your office does not pay you for gossiping and loitering around.
- **Time Management makes an individual disciplined and punctual.** One gets in the habit of reaching work on time as a result of effective time management.



## I SO PRAY, MY LORD

### Role of Managers in Inculcating Time Management Skills in Employees

Remember time once gone never comes back.” Doing the right thing at the right time is an art and comes with planning and understanding. Time Management is nothing but making the best possible use of time.

#### **Managers and superiors play an important role in inculcating time management skills in employees:**

The role of superiors is not only to sit in closed cabins but also to monitor subordinates. **Managers must lead by example.** The best way to finish work on time is to be punctual at workplace. If you expect your team members to reach office on time, you yourself have to be disciplined. Almost everywhere superiors are given some liberty but one should not misuse his power.

The rules and regulations of an organization are not only meant for subordinates but also for team leaders and superiors. Managers must adhere to guidelines of the organization for their team members to respect company’s policies.

**Ask your employees to keep their work stations organized.** Go to each of their desks and check whether files and folders have been arranged properly or not? Make sure there are no heaps of paper on their desks. Instruct your employees to clean their drawers at least once in a week.

**Ask your administration supervisor to issue notepads, registers, pens, folders etc to all your employees.** Point them out if they write on loose papers. As managers it is your responsibility to tell them their mistakes so that they manage things well. Personally check their drawers once in a while.

**Delegate them responsibilities as per their specialization, educational qualification and background.** Design their key responsibility areas after discussing what they are best at for them to take interest in work and complete assignments on time. Convey them their targets and deadlines from the very beginning. Make them aware of the goals and objectives of the organization.

Keep a track of employee performance. Install software which tells you when an employee enters and leaves the office. Implement a strong reporting system. Give them deadlines and ensure they finish work within the stipulated time frame. Appreciate employees who finish their work on time in the presence of all.

It is essential for the superiors to know what their employees are up to. Try to find out what they do the whole day. Motivate them to prepare a TO DO List. Check their task plan and make sure they do important and urgent tasks first.

Promote various training programs to instill time management skills in employees. Conduct various workshops where employees can be given certain tasks apart from their daily work. Ask them to finish off activities within the assigned time slots. Reward them suitably.

**Be a good listener.** Employees must have an easy access to their Boss’s cabin. Proper coordination between employees and their team leaders is essential for effective time management. Do not keep tasks pending at your end. Give approvals on time and make sure your team members do not indulge in unproductive tasks.

### **Time wasting activities**

- Private visits to office
- Greetings
- Unnecessary meeting.
- Social media –WhatsApp, Facebook, Snapchat
- Talking on phone
- Personal emails & correspondences & surfing the web
- Online shopping
- Computer game
- Personal grooming –spending more than 5 minutes on hair and makeup
- Long tea/coffee breaks
- Reading newspapers
- Long commute to work
- Office gossip
- In-fighting

### **POOR TIME MANAGEMENT**

#### Consequences of poor time management

Time is a continuous sequence of events that occurs in succession from the past, present, and future. It measures and compares life events to keep individuals on track with their goals personally and professionally. “Time and Tide wait for none” is a self-explanatory proverb that also stands true in the business world, wherein delivering work on time is crucial. Therefore, time management is one of the essential skills that any professional needs to have for a successful career. In addition, time management is necessary for efficient work and effective team management.<sup>102</sup>

However, time management can be tricky – especially if you need better time management habits. So, if you want to be successful in your career, start by improving your time management skills! This blog discusses the

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<sup>102</sup> <https://www.risely.me/tag/effects-of-poor-time-management/>

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causes and effects of poor time management and highlights six effective solutions to manage time at work. Finally, it offers tips on how to overcome this bad habit and become more productive at work.<sup>103</sup>

What is poor time management?<sup>104</sup>

Time management is essential for anyone looking to be productive at work. Time is the most valuable asset for every employee, and failing to manage time can negatively impact their work outputs and deadlines. Poor time management is a habit of wasting time and not completing tasks. Poor time management leads to inefficiency in organizing and planning tasks. In addition, it can lead to feelings of stress, anxiety, and missed opportunities among managers. Breaking bad time management habits can be challenging, but it's possible with the right tools and strategies. Do you know how good your time management skills are? If not, take this free assessment now.

### **12 EXAMPLES OF POOR TIME MANAGEMENT HABITS OF MANAGERS<sup>105</sup>**

- You focus on something other than essential tasks and may need to be aware of them.
- You choose tasks “out of the blue” without taking the urgency of a task into consideration.
- You don't make to-do lists of your work.
- You make notes but never refer to them.
- You have too many distracting stimuli in the workplace.
- You don't have boundaries and say yes to every task.
- You never delegate tasks to other team members.
- You are constantly multitasking.
- You don't have an organized system at your place.
- You focus your time on unproductive and easy tasks.
- You need to know the system or process that works for you to achieve goals. And not blindly copy others' way of working.

### **CAUSES OF POOR TIME MANAGEMENT<sup>106</sup>**

Poor time management is a common problem that affects anyone, regardless of occupation. Poor time management is caused by failing to plan and evaluate the work ahead of the deadline. Some significant causes of

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<sup>103</sup> Ibid

<sup>104</sup> Ibid

<sup>105</sup> <https://www.risely.me/tag/effects-of-poor-time-management/>

<sup>106</sup> Ibid

poor time management amongst managers are lack of clarity in one's job responsibilities and difficulties setting realistic deadlines and goals. By addressing the root cause of poor time management, managers can improve their workflow and become more productive at work.

**a) Poor Planning Skills**

Poor time management is linked with poor planning; it's common for managers not to plan out their day and end up taking too much work on the same day and not focusing on any task. The major drawback is that managers make assumptions and don't consider potential complications of the project. As a result, they waste valuable time and resources without realizing it.

**b) Failing to set priorities**

It's a common habit to try and do too many things at once, leading to frustration and overwhelm. In addition, when tasks are viewed as difficult or impossible, instead of channeling all the energy and efforts to complete the job, employees tend to dwell in hopelessness which leads to poor time management. Managers who have poor time management skills need help distinguishing between important and unimportant tasks. They also tend to be over-tasked and stressed because they constantly try to balance multiple responsibilities.

**c) Not having clear goals**

If managers do not understand the goals, it becomes difficult for them to complete the task efficiently. To avoid the frustrating cycle of stagnation and regression, start by setting clear and realistic goals. This can be done by clearly stating the goals. When managers have clear goals, it becomes easier to plan and decide how to spend time in order to accomplish those goals. Set long terms and short-term goals, refer to the list of goals, and set priorities to achieve those goals.

**d) Being unmotivated**

If managers are feeling unproductive or unmotivated, one of three things is likely causing the problem: lack of focus, procrastination, or guilt. Poor time management skills and overwhelming stress can cause a lack of focus. Procrastination may stem from boredom or not having enough to do, while guilt might be due to feeling that you're not good enough. There are many ways to overcome these issues and get back on track – starting with understanding what's behind them and then finding the right strategies to address each issue.

## **EFFECTS OF POOR TIME MANAGEMENT ON JOB PERFORMANCE<sup>107</sup>**

Poor time management is the biggest challenge at work, and it affects the worker personally and professionally, leading to insecurities about their capabilities. It also affects the entire team and organization. So let's look at the effects of ineffective time management.

**a) Low productivity**

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<sup>107</sup> <https://www.risely.me/tag/effects-of-poor-time-management/>

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Low productivity is a common issue that can harm an employee's work life. Poor time managers don't plan and prioritize work, leading to low productivity. It can cause them to lose time from day-to-day tasks and eventually lead to burnout. There are many ways to improve time management skills, but setting realistic goals is crucial. Once you know what's expected of you daily, it becomes much easier to plan and track progress.

### **b) Missing deadlines**

Deadlines are critical as they help to keep workers productive and organized. When deadlines are not met, it can lead to less-than-ideal working conditions, making it hard to meet future deadlines. It can also create tension between team members as different job areas start getting affected. In short, missing deadlines ultimately leads to stress and frustration for everyone involved.

### **c) Dissatisfaction**

The stress and negative feeling attached to poor time management make managers dissatisfied. The dissatisfaction leads to incomplete tasks, missing deadlines, and feelings of shame and guilt. Employees with poor time management skills will feel burnt out at work and unable to get the motivation needed to perform their duties to their best. As a result, they end up feeling overloaded and less productive overall.

### **d) Poor work–life balance**

For managers to achieve work-life balance, it is essential to understand time management clearly. When poor time management skills are in place, managers work hours without breaks and eventually suffer from lower productivity levels. Not only does this lead to burnout, but it also affects personal life badly – most often leading to stress and anxiety.

### **e) Procrastination**

Procrastination is a habit that can stop us from achieving our goals. It's one of the biggest time killers and usually happens because it is an easier option. Managers who need help with time management typically need more time to figure out what they should do next and work towards it. Poor time managers can overcome procrastination by identifying the root cause and finding a solution. They can start by planning their days and dividing tasks into smaller chunks to accomplish them. This will restore confidence and motivation to pursue more tasks.

### **f) Poor working relationships**

Various factors can cause poor working relationships, but time management often plays a significant role. When deadlines are missed, tasks are not completed on time, or work is done haphazardly, it's hard to build good relationships with co-workers. Furthermore, poor time management can lead to disagreements and even conflict among colleagues. It leads to a less productive work environment that is unhealthy for anyone involved.

Other Interesting Reads

Six solutions that managers can use to manage time at work effectively<sup>108</sup>

**a) Set Priorities and know how you want to spend it**

Managers need to be able to prioritize and know how to spend their time wisely to keep their time manageable. To set priorities, managers should list the tasks they need to accomplish and then prioritize them according to their importance. Once they have identified the top priorities, they should break them down into smaller tasks to achieve them. Setting realistic goals for the week will make it much easier for managers to stay on track and ensure that everything gets done as planned – without any unnecessary stress.

**b) Use Calendars and Journals**

Plan your work and stick to deadlines for each task to improve time management. For example, use calendars to divide your days into specific blocks of time for work-related tasks. It will help you stay on track and avoid feeling overwhelmed by multitasking. Another effective way to manage time is by establishing personal goals and deadlines that are Challenging but doable – this will keep you motivated.

**c) Have an organized workplace**

Having an organized workplace not only makes your life easier but also ensures that you are getting work done. Follow these tips to help make your workspace a better place:

**1. Get rid of distractions** – It's essential to clear away all unnecessary items from your workspace to focus on the task. Turn off unnecessary notifications and limit access to social media sites so you can concentrate fully on the job without interruptions!

**2. Create a to-do list**– Creating a to-do list based on the priorities at the workplace is a simple and highly productive way to increase efficiency at the workplace.

**3. Keep a clean environment**– By decluttering the workspace and keeping things in their place, the workplace is manageable, and the workflow is consistent.

**4. Keep a timer**– A timer will help you manage your time; it will also help in tracking the amount of time spent on one task, and at the end of the week, you can check what tasks are taking up the majority of hours and what can you do reduce the time and still effectively complete those tasks.

**d) Delegate work**

Delegating work is a vital way to save time and energy. It allows managers to focus on more important tasks while leaving the less-tedious ones to the right people. To succeed in the delegation, it's essential to clearly understand what needs to be done and how much time it will take. Once this groundwork has been laid out, it's

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<sup>108</sup> <https://www.risely.me/tag/effects-of-poor-time-management/>

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time for planning – establish deadlines, track progress regularly, and ensure everyone knows what to do. Test your delegation skills with Risely’s free self-assessment for managers.

### **e) Avoid Multitasking**

It becomes challenging when multiple tasks need to be completed in a short time frame. Limit your duties to those completed within a set time frame, and avoid multitasking or working on more than two projects simultaneously. It will help you stay focused and complete each task with better quality control.

### **f) Manage and limit the time wasters**

Managers can increase their efficiency and concentration while working by managing time wasters. Know what time wasters you tend to procrastinate on and take action to avoid them. For example, If your biggest time-wasting habit is indulging in office conversations, you limit it by promising not to engage in discussions with co-workers during working hours or informing co-workers not to get in touch during work hours except for work.

## CONCLUSION

Poor time management is a common problem that can harm a manager’s productivity at work. Managers can improve their work-life by understanding the different causes of poor time management and practical solutions to overcome them. We hope this post has shed some light on the issue and given you some tips on overcoming it. In addition to this blog post, we recommend checking our website for more helpful information on time management.<sup>109</sup>

## CHALLENGES OF TIME MANAGEMENT

- a) More effective when you are in a position of authority or control –a junior employee will not be able to manage time well if his/her bosses are poor timekeepers.
- b) Social context. In a society that does not value time, your excellent time management will not be appreciated. One will end up alone at a meeting waiting for late colleagues.
- c) Slow response to emergencies and changing priorities. We live in a dynamic world which is ever changing.
- d) Time management should not be time obsession One should not spend all their time staring at their watch. Do not become a slave to time!
- e) Time management must be for a personal or organizational purpose –it should not be an end unto itself. It must be geared at achieving efficiency and effectiveness.

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<sup>109</sup> <https://www.risely.me/tag/effects-of-poor-time-management/>

## EISENHOWER DECISION MATRIX

Using the grid/matrix

- Quadrant I is for the immediate and important deadlines.
- Quadrant II is for long-term strategizing and development.
- Quadrant III is for time pressured distractions. They are not really important, but someone wants it now.
- Quadrant IV is for those activities that yield little if any value. These are activities that are often used for taking a break from time pressured and important activities.

Many people find that most of their activities fall into quadrant I and III. Quadrant II is often under used. Yet, Quadrant II is exceptionally important because one must work both tactically and strategically at the same time. Finding ways to expand Quadrant II activities is a common outcome from using this grid.

Utilize limited time effectively.

A manager needs to prioritize activities to be undertaken in limited time. We need to focus on the most important and urgent assignments that will add organizational value. We need to learn to be brief and to the point and to summarize our opinions and instructions

## DELEGATION

To delegate means to assign or entrust someone with responsibility or authority. A Delegate requires a principal who delegates and the delegate to whom authority is delegated. In an organization delegation is ordinarily from above –with a person in a superior position delegation to a subordinate member of the team. Delegation typically means the transfer of responsibility for a task from a manager to a subordinate. The decision to delegate is usually made by the manager. However, sometimes an employee will volunteer to take on an expanded role.<sup>110</sup>

Delegation can also happen when there is a less formal chain of authority. For example, a member of a peer group who has been designated as a leader of a team might delegate tasks to peers in the group.<sup>111</sup>

There are rare instances where a subordinate will delegate to a superior officer also known as delegating upwards (e.gif subordinate needs to travel at short notice and delegates urgent pending work to his/her boss). Delegation

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<sup>110</sup> <https://www.thebalancemoney.com/delegation-skills-2059688>

<sup>111</sup> <https://www.thebalancemoney.com/delegation-skills-2059688>



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must be effective and complete –do not delegate then follow up to supervise how the delegated authority being executed.

### WHY DELEGATE?

- Save time –you can focus on the bigger picture and legacy issues when you delegate the smaller things
- Achieve more –by delegating you reduce heavy burden upon yourself which can be overwhelming. You can complete more tasks with more hands.
- Increase your value by focusing on high value outputs
- Capacity building and skills development for team members.
- Utilizing specialist skills you may lack
- Increased self esteem and confidence
- Greater job satisfaction
- Succession planning –you will not be there forever.
- Greater efficiency
- Greater synergies
- Team flexibility
- Building greater teamwork
- Balanced workloads
- Better staff retention and greater work satisfaction

### WHAT TO DELEGATE

- Tasks that other team members can do
- Legally permissible –Accounting Officer may not delegate certain functions
- Routine tasks
- Interesting tasks –don't keep all the fun stuff for yourself
- Tasks others can do better than you
- Tasks others might enjoy more than you

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- Tasks leading to skills development
- Whole tasks –don't delegate pieces of work
- Time-consuming tasks
- Tasks for which you do not have primary responsibility

### **WHAT YOU SHOULD NOT DELEGATE**

- Tasks you are required by law to perform
- Boring tasks
- Crises requiring your personal authority and expertise
- Ill-defined tasks
- Confidential matters
- Praises or reprimands
- Every task –over delegation is as dangerous as not delegating at all
- Planning, strategy, vision and legacy issues
- Tasks for which you take primary responsibility
- Tasks that have been delegated to you –delegated authority cannot itself be delegated

### **DETERMINING WHO TO DELEGATE**

- Short-term vs long-term –not who does it best but who will benefit most in the long run from the delegation
- Deadlines –short deadlines required delegating to an expert rather than a novice
- Skills gaps and need for development
- Skills and competences of team members
- Workload
- Likelihood of resistance
- Availability of support systems

## PREPARING TO DELEGATE<sup>112</sup>

### a) Know What to Delegate<sup>113</sup>

Not every task can be delegated. For example, performance reviews or any personnel matters should be handled by you. After all, hiring the right talent and knowing each employee's strengths and weaknesses will ultimately make you better at assigning deliverables and transferring responsibility to the appropriate team members.

Several other day-to-day activities don't require your oversight, though. Is there a task you regularly tackle despite knowing your co-worker is better equipped to complete it? Would assigning the project to other employees help bolster their careers? If there's someone who could do the work better, or you think this could be a teachable moment, delegate. It will show you trust and value your team, while also giving you time to focus on more strategic projects.

### b) Play to Your Employees' Strengths and Goals<sup>114</sup>

Every employee should have goals they're working toward, and within those goals are opportunities to delegate. For example, maybe you have a direct report who wants to gain management experience. Is there an intern they could start supervising, or a well-defined project they can own the execution of? The type of work you delegate could factor into their professional development plan.

For other tasks, there's likely someone on your team with the specific skill set needed to achieve the desired result. Leverage that and play to your employees' strengths. When someone has a higher chance of excelling, they're more motivated and engaged, which then benefits the entire business.

### c) Define the Desired Outcome<sup>115</sup>

Simply dumping work onto someone else's plate isn't delegating. The projects you hand off should come with proper context and a clear tie into the organization's goals.

"You've got to have real clarity of objective," says Harvard Business School Professor Kevin Sharer in the online Management Essentials course. That includes having alignment on "what does good look like" and by what timeline, and "the technique of measuring accomplishment."

Before anyone starts working on a project, they should know what they need to complete and by when, including the metrics you'll use to measure the success of their work.

### d) Provide the Right Resources and Level of Authority<sup>116</sup>

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<sup>112</sup> <https://online.hbs.edu/blog/post/how-to-delegate-effectively>

<sup>113</sup> Ibid

<sup>114</sup> Ibid

<sup>115</sup> <https://online.hbs.edu/blog/post/how-to-delegate-effectively>

If the person you're delegating work to needs specific training, resources, or authority to complete the assigned project, it's your role as a manager to provide all three. Setting someone up for an impossible task will frustrate both sides; your colleague won't be able to achieve the desired outcome, and then you'll likely need to put that work back on your to-do list.

This is also where you need to fight the urge to micromanage. Telling your co-worker, step-by-step, how you would accomplish the task and then controlling each part of the process won't enable them to learn or gain new skills. Focus instead on what the desired end goal is, why the task is important, and help address any gaps between the outcome and their current skill set.

#### **e) Establish a Clear Communication Channel**

While you want to avoid micromanaging, you do want to establish a communication channel so that the person you're delegating to feels comfortable asking questions and providing progress updates.

"You've got to have some way to communicate so that the person you delegated to can come back to you and report," says Sharer in the Management Essentials course. "You've got to have some way along the way to see how things are going. It isn't fire and forget. That is, 'I just give you the task and I don't worry about it anymore. We've got to have some way to monitor the progress along the way without me getting in your way.'"

Setting up regular check-ins and providing feedback throughout the project can help with this.

#### **f) Allow for Failure<sup>117</sup>**

This step is particularly important for the perfectionists who avoid delegating because they think their way is the only way to get the work done. You need to allow for failure—not because your employees might fail, but because it will enable experimentation and empower the people you're assigning tasks to, to take a new approach.

If you're open to new ideas and approaches to the work, you'll have an easier time delegating when able.

#### **g) Be Patient<sup>118</sup>**

As a manager, you likely have more years of experience in your field. Because of this, a task you can complete in 30 minutes might take an employee a full hour the first time they complete it.

You might be tempted to refrain from delegating certain tasks knowing that you can get them done faster, but be patient with your employees. Think back to the first time you completed a specific task early on in your career. You probably weren't as efficient as you are now; your time management skills have improved.

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<sup>116</sup> Ibid

<sup>117</sup> <https://online.hbs.edu/blog/post/how-to-delegate-effectively>

<sup>118</sup> Ibid

## I SO PRAY, MY LORD

As you continue to delegate and your employees become more familiar with the tasks that need to be completed, you'll notice that the work will get done faster over time.

### **h) Deliver (and Ask For) Feedback<sup>119</sup>**

In addition to monitoring progress, you should also deliver feedback to your employees after the tasks you've delegated are complete.

If a task wasn't completed as assigned, don't be afraid to offer constructive criticism. Your employees can take this feedback and make changes the next time a similar task is assigned. On the other hand, remember to provide positive feedback and show your appreciation when a task was done well.

To ensure you're delegating effectively, you'll also want to ask your team for any feedback that they can give you. Ask your employees if you provided clear instructions and determine if there's anything you can do to better delegate in the future.

### **i) Give Credit Where It's Due**

After you've delegated tasks and they've been seen through to completion, credit those who achieved the work.

"Recognizing that success is because of your team is not only right, but it has the added benefit of making those around you more engaged—making you even more successful," writes HBS Online Executive Director Patrick Mullane for Richtopia. "It's counter-intuitive, but not claiming success for yourself will lead to more future wins."

The more you thank and credit those you've delegated work to, the more likely it is they will want to help you on other projects in the future.

## SOLVING PROBLEMS IN DELEGATION

- You must be available to solve problems faced by the delegate in execution
- Make modifications taking into account changing operational environment and situation on the ground
- Get a brief concise summary of the problem faced
- Ask the delegate to suggest a solution before you give one
- Be patient –do not take hasty decisions
- Delegate the agreed corrective action where possible

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<sup>119</sup> <https://online.hbs.edu/blog/post/how-to-delegate-effectively>

- Guard against reverse delegation where delegated task comes back to you

## EVALUATING EFFECTIVENESS OF DELEGATION

- Give constructive criticism that will lead to improvement
- Criticize the action –not the person
- Give credit where it s due and commend good work

## BARRIERS TO DELEGATION<sup>120</sup>

Getting over these human barriers requires some emotional intelligence and personal development. It requires taking a good look at ourselves and evaluating how we are doing with the following:

### a) **Fear of Failure**<sup>121</sup>

What if they fail? The reality is that everyone makes mistakes in the workplace and if managed appropriately mistakes can be excellent learning opportunities to improve performance, promote innovation, and improve operations.

To delegate effectively, managers must recognize their own fears and allow some room for their team to make mistakes. With adequate development and trust, team members will more often meet the challenge than fail.

### b) **Envy of Your Staff Member’s Ability**<sup>122</sup>

So, you’re a little bit *green with envy* at that talented staff member of yours whose ability in a certain area outshines your own. In your private thoughts, you know you are reluctant to delegate to her because she is so good at what she does. So what should you do?

Talk to yourself and get over it! Even laugh at your envy if you must! Once you have intelligently dealt with your own negative emotions, let your talented staff member do what she does best. Give her full credit as appropriate. The truth is she makes you look good! Let her excel and you’ll be known as a manager and leader who can utilize the talents of your staff effectively.

### c) **I Can Do it Better Myself**<sup>123</sup>

This is probably true! After all, your technical ability is part of the reason for your success in your organization. The correct question you should ask yourself, however, is the following:

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<sup>120</sup> <https://managementisajourney.com/five-common-human-barriers-to-effective-delegation/>

<sup>121</sup> Ibid

<sup>122</sup> Ibid

<sup>123</sup> <https://managementisajourney.com/five-common-human-barriers-to-effective-delegation/>

## I SO PRAY, MY LORD

*Should I be doing the work myself or is it better for me to delegate this work to someone else?*

Your role as a manager is one of process to achieve organizational outcomes through organizing, controlling, planning, communicating, etc. You can fulfill this role better when you are not bogged down with work that others should be doing. Invest the time in developing your people to perform these tasks.

Lower your standard to an acceptable level of performance. They do not need to complete the task exactly as you would do it to meet organizational goals. After all, there are many methods for accomplishing most tasks.

### d) **I Like To Do This Myself**<sup>124</sup>

There is a principle of delegation that says managers should delegate tasks that can be done by others. Some managers take this advice too far and delegate everything to their staff members. This is not what is meant.

Delegated tasks should be appropriate to the responsibilities and organizational level of the team member. Further, there are some managerial tasks that are inappropriate for a manager to delegate to others to perform. This human barrier to delegation addresses those tasks we like to do but really should not do because others can do them. Let someone else enjoy this part of your job!

### e) **Fear of losing control** <sup>125</sup>

Part of delegating effectively is picking the right person for the task. This requires assessing both their willingness and capacity to perform the task. Assuming they have the right attitude and skill level to perform the task, give them the authority they need to complete the task for you.

As appropriate, establish check-in points so you can monitor their progress. Don't over-monitor them however (particularly your superstars) or you will frustrate them. You have invested in their development and created a positive work environment for them to do their best—now you just need to trust them to give you the desired results.

## CUSTOMER CARE

*“A customer is the most important visitor on our premises. He is not dependent on us. We are dependent on him. He is not an interruption of our work. He is the purpose of it. He is not an outsider of our business. He is part of it. We are not doing him a favour by serving him. He is doing us a favour by giving us the opportunity to do so.”*

Mahatma Ghandi

### **Define Customer Care**

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<sup>124</sup> Ibid

<sup>125</sup> <https://managementisajourney.com/five-common-human-barriers-to-effective-delegation/>

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A customer (client) is a person or organization that buys goods or services from a store or business (including legal practice business). In its simplest form customer care is caring for the customer. Meeting and exceeding customer expectations by giving them more than what they expected. Modern consumers are aware of their right to a high standard of customer care. Customer care is very important to us. Customer care is not the transaction itself (e.g. legal advice) but the service/conduct that is given when delivering the transaction.

### **KEY ASPECTS OF CUSTOMER CARE**

- a) Personalized. Adjust yourself to the character of the customer –it must be customer driven and geared towards the unique needs of the customer.
- b) High quality
- c) Professional
- d) Helpful
- e) Speedy resolution. “Come back tomorrow” is not an option.
- f) One stop service –all issues should be addressed by one person in one office without referral.
- g) Available when required –with online resources customer care can be provided 24 hours a day.
- h) It can be outsourced where institution lacks skills.
- i) Integrate with complaints management system.

### **Who is Your Customer?**

- The customer is the reason we are in business.
- Any person who requires your service directly or indirectly
- Any person who pays for your service
- Any person you interact with professionally

### **Why customer care?**

- Customers vote with their feet –a customer who is disappointed with your customer service will leave.
- We live in a competitive environment. There are other service providers who are only too willing to steal your customers.



## I SO PRAY, MY LORD

- It costs 5 times as much to recruit a new customer as it does to retain an existing one. Customer care builds loyalty.
- Repeat customers are the backbone of any business.
- 60-80% of company business is from existing customers –word of mouth. Once your customers give negative feedback they will not attract new business for you.

### **SKILLS REQUIRED FOR EFFECTIVE CUSTOMER CARE<sup>126</sup>**

It's easy to fall down the rabbit hole of customer-acquisition. This is especially true when it comes to marketers, financial teams, and other c-suite leaders who want to show business growth. We want new customers, and that's okay. In fact, that's a good thing.

However, in your request to reach new markets and acquire new clients, it is imperative you don't ignore the ones you already have. Customer acquisition costs are high; it is six-to-seven times more costly to acquire a new customer than retain the ones you already have. Executing your customer service philosophy requires a mindset of dedication by both B2B and B2C businesses. Some of the most common roles that require these skills include customer service agents, customer support representatives, customer relationship managers, and implementation specialists.

However, the need for these skills go past your typical "customer service" roles. Every employee at your company needs a mindset that puts customers first. Even if an individual isn't having a face-to-face conversation with clients, every team, from product to marketing to finance, makes decisions that affect the customer.

Once you find employees who have these customer service skills, make sure they feel enabled to use them<sup>127</sup>.

### **CUSTOMER SERVICE SKILLS<sup>128</sup>**

No matter your business size or industry, your customers have one thing in common: their humanity. Every customer is a person who has taken the time out of the hustle and bustle of their hectic day to interact with your brand. And, each person wants to feel respected and appreciated.

Employees with these customer service skills do more than create transactions, they create positive customer experiences. Alternatively, companies who don't value and empower these skills can find themselves sliding down a slippery slope.

Think of each skill as a thread – once weaved together, they create a support network every client can reach with the confidence they'll find what they need.

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<sup>126</sup> <https://www.g2.com/articles/customer-service-skills>

<sup>127</sup> Ibid

<sup>128</sup> Ibid

## 1. Empathy<sup>129</sup>

Understanding the customer and the problem is key for anyone in a customer facing role. (Plus, it helps when collaborating with your co-workers!)

In a recent MarketingProfs podcast with speaker and author Jay Baer, he shared why empathy has an impact on a business' bottom line:

*"At one point, empathy was the default. When we interacted with customers and prospects, we did so almost reflexively with a degree of humanity, a degree of warmth, a degree of caring. It's safe to say now that we are operating in an era of empathy deficit, not only in business, but [also] in politics and in life. The default state is no longer warmth and caring, it is knives out. Consequently, if you can be disproportionately empathetic in your business, it is noticeable in a way that it wouldn't have been in the past and can create customer conversations accordingly."*

One-to-one customer interactions with your customer success team are the biggest place you can show empathy. Anyone on the phone, live chat, or **social media customer support** must understand that they are talking to a real live person.

It can't be stated enough that customers are human beings, not another stat for your spreadsheets.

Sometimes, empathy will mean you have to break the rules or make an exception. If someone needs you to bend the rules due to a family emergency or extenuating circumstances, and you do so, you could develop a lifelong brand advocate.

## 2. Clear communication skills<sup>130</sup>

Service reps must be able to explain the potential solutions to customers' problems, and do so in a clear, concise manner. As a communication studies major, I have extra excitement for this customer centric skill.

Clear communication skills mean speaking without jargon, especially if it's terminology specific to your company. Those who communicate well also understand when their point isn't getting across and know how to offer alternative explanations if the original doesn't make sense.

On the technical side, when it comes to verbal communication, those speaking to customers in person or on the phone must also speak clearly – no mumbling allowed!

Non-verbal communications also come into play during these conversations, even when they're on the phone.

Take a look at the studies done by Dr. Albert Mehrabian in the 1970's. According to his extensive research, only 7 percent of his communication is the words we say.

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<sup>129</sup> <https://www.g2.com/articles/customer-service-skills>

<sup>130</sup> <https://www.g2.com/articles/customer-service-skills>

## I SO PRAY, MY LORD

The remaining elements of communication come down to non-verbals signals you give people. 38 percent of these include voice and tone. In other words, “It’s not what you say, it’s how you say it.” The remaining 55 percent depends on body language.

Think of the employees at a retail shop or those who work trade shows as part of an event marketing strategy. Those with exceptional communication skills will have a confident, open stance and make eye-contact with ease. No slouching or crossed arms – this makes employees much more approachable.

Why do these non-verbal skills matter so much?

As described by Dr. Mehrabian, “The non-verbal elements are particularly important for communicating feelings and attitude, especially when they are incongruent: if words and body language disagree, one tends to believe the body language.”

So, if the words you’re saying don’t match up to how you’re saying them, people trust your tone more.

And yes, in case you were wondering, the lack of non-verbals can be the cause of communication issues in text messages, especially for the easily offended. If you are using chatbots and email for customer support, ensure employees have a history of excellent written communication, including grammar.

It’s no surprise these 93 percent of non-verbal communication skills apply to those in an in-person customer facing role. However, don’t forget their importance in phone support, too. For example, posture has a huge impact on a person’s tone and vocal quality. (I’m an actor, trust me on this one!)

### **3. Product knowledge**

While it may seem like a given, product knowledge is a crucial element that can’t be ignored. Regular training and product updates to give your reps a true understanding of your product, as well as any product changes that will affect customers, is key to the success for your company.

In order to truly help people, your reps must be able to give accurate and up-to-date information about your product or service.

If not, you’ll upset your customers even more!

According to a survey of more than 1,000 adults by the Consumer Reports National Research Center, 70 percent of people are highly annoyed when they are transferred to a representative who can’t help or is wrong.

In-depth product knowledge does more than enable service agents to troubleshoot customer problems it allows reps to help customers get the most out of your product, ensuring your product or service provides the maximum value.

When they do face a question they can’t answer, make sure that customer service professionals know who to turn to when they need additional information.

### **4. Problem-solving skills**

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In essence, problem-solving is what customer service is all about.

While there are many problem-solving models, those interacting with customers need to be quick on their feet. There's no time for group brainstorming. Your clients want their problems fixed and they want them fixed *now*.

Here is an example of the problem-solving process that applies to customer service situations:

Great customer service means getting to the heart of problems immediately, then coming up with solutions. It's important to note step No. 5 in relation to the customer experience.

You may have come up with a solution to the problem, but did it actually work for the customer? If not, it's time to go back to the beginning and identify new potential solutions.

The circle doesn't stop until your customer's issue is solved.

### **5. Patience**

Customer service reps will often find themselves on the front line against unhappy customers. Depending on the situation, people may have worked themselves up into quite a state before speaking with a customer service representative. The ability to stay calm and keep from taking things personally will help diffuse tense situations with angry customers.

A customer service representative may find themselves with a customer who doesn't know how to describe the problem or struggles to accurately answer the reps questions.

Service reps who maintain their patience are less likely to get irked (making a negative situation even worse) when interacting with a frustrating customer.

Let's face it: No one is perfect, but there are, no doubt, some frustrating people out there. And, as anyone who works in customer support will tell you, sometimes it seems as if these are the ones who call the most!

Knowing when to take a big (silent!) breath in, then out can come in quite handy.

### **6. Positive attitude**

According to Winston Churchill, "Attitude is a little thing that makes a big difference."

Do you know what? He's right.

It's a lesson I learned from my Dad at a young age. While I love all of his life lessons, thanks to his career in sales, this one is applicable when discussing customer service skills. Growing up, my Dad not only pointed out poor customer service, but he also made a point of letting managers know when employees showed exemplary customer service.

There's no doubt each one of these people displayed a positive attitude.

## I SO PRAY, MY LORD

I remember reading the following poem by Charles Swindoll on my Dad's desk when I was at that susceptible middle-school age when motivational skills have the strongest impact.

Even if a customer service agent is having a bad day, the calls are going to keep happening. The important part is how that agent reacts, even if a particularly feisty customer happens to be pushing their buttons.

Having a positive attitude is one of those customer service skills that is essential for all employees. These people are more enjoyable to be around. Plus, they're more ready to solve problems and able to execute the next skill: Positive language.

### **7. Positive language**

Those with positive attitudes are able to focus on solutions. Building on that, those who speak positive language also speak in positive terms – they don't mention the negatives.

I know what you're thinking: "Isn't that the definition of an optimist?"

While it's likely an optimist has a positive attitude, positive language is a more technical skill. Positive language is how a customer service rep uses their communication skills to share information.

Imagine you receive a catalogue sent using direct mail marketing. You call to order a sweater (old-school, I know!), only to find it's out of stock.

Many times, this is what you'll hear: "I'm sorry we don't have that in stock, it's backordered and you can't get it for two weeks."

Now, imagine you instead hear, "That product will be available in two weeks. I can place your order now, and you will receive it on approximately November 15th."

Notice the difference?

By using positive language, customer service managers can overcome a customer's problem before they even knew they had one.

### **8. Listening skills<sup>131</sup>**

Even though a rep might face the same problem 15-to-20 times a day, it is imperative they still listen to each person and each call.

Customer experiences vary from person to person. A problem may be common, but that doesn't mean that's *this* customer's problem.

If your customer service representatives are making assumptions, you'll find yourself with customers who are increasingly agitated.

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<sup>131</sup> <https://www.g2.com/articles/customer-service-skills>

In addition to not assuming, consider the following ways to improve listening skills:

Asking questions, taking notes, and avoiding interruptions are all excellent tactics to improve listening.

Encourage all employees to take these actions as a way to increase productivity through heightened communication skills.

### **9. A willingness to go the extra mile<sup>132</sup>**

A willingness to go the extra mile can also be thought of as “wow” customer service. Forbes author Micah Solomon describes wow customer service as “service that goes beyond fulfilling basic customer expectations and does so in a creative, unexpected way.”

Put simply, it makes people go, “Wow.” (Who would have guessed?)

Some companies, such as fashion brand Zappos and petcare company Chewy, have built their brands on this type of customer service. I can say for a fact they’ve both made a fan of me.

How exactly does Chewy make customers say wow? Its customer service agents’ skills extend across all channels. The brand has a dedicated Twitter account, complete with a Twitter banner showing off the smiling faces of these stellar employees. When it comes to phone calls, there is absolutely zero automation, and service reps aim to answer the phone within a mere five seconds.

### **10. Personal responsibility<sup>133</sup>**

Personal responsibility is critical in all decisions and relationships, be it in or out of the office.

While it’s quite understandable for mistakes to be made in customer service roles, authentic customer support employees know when they have made a misstep. We’re all human, and we make mistakes. Accepting responsibility for those mistakes and looking for ways to fix them is how you turn a negative to a positive.

And, just like responding to negative customer reviews can turn the tides, acknowledging the mistake and fixing it is how you can turn a frustrated client into a brand advocate.

### **11. Confidence**

Customers will have faith they are getting the right answer (and one that will work!) when they talk to someone with confidence. And, when you go back to the third skill – training service reps on your product and service – this should come naturally!

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<sup>132</sup> <https://www.g2.com/articles/customer-service-skills>

<sup>133</sup> <https://www.g2.com/articles/customer-service-skills>

## I SO PRAY, MY LORD

Confident employees are a positive reflection on your brand, increasing your company's trust and credibility. Proper training and internal communication channels to troubleshoot new customer issues as they arise will naturally give reps the confidence to excel.

If you have a customer service agent with great empathy, listening, and problem-solving skills, but who's lacking just a bit in their self-confidence, consider doing what you can to give them a confidence boost.

Provide employees with positive feedback and some physical tips on how to be confident. Just like those who need some help with easy networking tips, smiling and maintaining a confident posture will go a long way. (Plus it helps those communication skills!)

### **12. Tenacity and resilience<sup>134</sup>**

Let's face it – most people only call customer service when they have a problem. This means that your customer service reps are often faced with unhappy people non-stop throughout the day. Sometimes, it's a simple problem to fix. Other times, not so much.

Customer Service reps need the ability to deal with other people's frustrations day in and day out, while still maintaining that positive attitude.

Tenacity is also required when support agents are facing problems that aren't easy to solve. Sometimes, it may be an usual technical difficulty. Alternatively, service reps could find themselves working with the un-tech savvy who need some extra time to get through the basics.

Other times, employees might be helping a customer with extenuating circumstances. Customer service reps will have to spend extra time, or take measures not usually taken, to ensure the issue is resolved.

Think of tenacity as resilience: the dogged determination not to stop until the problem is solved.

### **13. Authenticity<sup>135</sup>**

Authenticity will go a long way when it comes to customer service. As a midwestern girl (I grew up surrounded by cows and cornfields), I grew accustomed to people who care about each other.

This goes back to empathy and listening – you're not just reading a script, you're not pretending to listen, you are giving your best solution to each and every customer.

It means that you're not trying to help a customer to fulfill your own goals (whether it's making a renewal, hitting your target, or avoiding looking bad to your boss). You want to help every individual you cross paths with.

### **14. Adaptability**

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<sup>134</sup> <https://www.g2.com/articles/customer-service-skills>

<sup>135</sup> <https://www.g2.com/articles/customer-service-skills>

While you may have a standard customer service script, customers are not made from cookie cutters. Each individual's situation is unique, and you need to be ready to adapt to each one.

### **15. Attentiveness**

Think of your standard romantic comedy with the dreamy leading man. What do all the girls say? "He made me feel like I was the only one in the room."

Be attentive to your customers and make them feel like they matter.

Instead of movie scripts, think of applying a small business strategy. Coming from a small town, I grew up witnessing businesses that showed appreciation to all customers by spending time with them.

Sometimes, small businesses are the ones that understand their clients the most; they have lifelong customers because of the time they spend building relationships.

Putting quality over quantity (rather than speed and moving on to the next customer), gives each customer all the time they need. This is one of the reasons online fashion retailer Zappos has seen such success.

Its longest customer service call? Take a guess.

20 minutes? 30 minutes? An hour? Try over **10**. Ten hours and 43 minutes, to be precise.

### **16. Desire to learn**

Over time, your product, service, and procedures will continue to change. You need customer service employees who are both ready and willing to learn. Support reps are the front line, educating customers about changes.

Like the other customer service skills that apply to all employees, those eager to learn show that positive attitude we discussed in point No. 6. In addition, this trait shows a commitment to the investment you have made in an employee and the sincere desire to advance their career. Plus, when you provide employees with opportunities to learn, their appreciation will show in the high levels of customer service they provide.

Earlier, I mentioned Chewy. According to UJET, this concept is a direct reflection on the high levels of customer support its team gives: "Chewy makes a commitment to training its agents when they join the company and on a continuing basis, contributing to high morale, low turnover, and a great work environment that facilitates friendly, thoughtful customer service interactions."

### **17. Professionalism**

When a customer has a problem, they don't care about the fact that your customer service agent didn't sleep last night, broke up with their boyfriend, or had a fight with their mom.

As soon as that phone is picked up, all personal problems are left behind. It's time to put on a smile (even over the phone!) and focus on the needs of the customer first.



## I SO PRAY, MY LORD

It's worth noting that this doesn't just apply to your customer relationship team. We can all have a bad day now and then, but your co-workers may get fatigued when every day is full of complaints. Both clients and co-workers appreciate when you can set aside complaints to get the job done – which is the perfect tie-in to our next customer service skill of acting ability.

### **18. Acting ability**

Fake it till you make it – it doesn't just apply to actors. All service agents need to know how to put on a happy face.

No one wants to talk to a robot. Whether or not you have a script, showing some personality will go a long way to help customers make a connection with your customer service rep. That connection is what gives them a positive experience.

Even if you're having the same conversation for the 100th time, it's the first time *this* customer is having it with you. Every time a customer service professional hears, "I can't get your website page to work," they need to act like they're hearing it for the first time.

This means that those in a customer facing role need to show their energetic side in every interaction. Whether they're bored, tired, or stressed, reps can't let it show.

### **19. The ability to respond quickly**

No customer wants to be kept waiting. This is true for in-person interactions, as well as chatbox software and phone calls. Good customer service skills require being able to not only adapt, but do so quickly.

If you leave someone waiting too long for a response on that chat box, there's a good chance their frustration levels will increase, making it even harder to get their satisfaction levels up.

Help your employees show off their ability to respond quickly by ensuring you have enough staff. This skill is intertwined with product knowledge and confidence. Arm your customer service representatives with everything they need and help them help customers avoid that dreaded elevator music!

### **20. Time management skills**

Time management skills are especially applicable to serving customers while working for a B2B company. Customer service software can play a part in giving customers quick response time. At the same time, each employee must take personal responsibility as well.

Customer relationship managers and implementation specialists have many customers to take care of, and no one can feel forgotten.

This is where time management skills are crucial.

Customer support teams have a variety of responsibilities to juggle each day when it comes to strategizing time management, including:

- Which customers will need a little extra love, costing the service rep more of their time
- How long onboarding calls will take
- How much time to budget for responding to emails
- When preparation is needed before meeting with a customer
- How to prioritize time spent researching answers to unusual customer questions

Customer service representatives can maximize their productivity by using The Action Matrix (shown below) for prioritizing their tasks.

## **21. The ability to let it go**

Knowing how to let it go is a skill that I often advocate.

Those in customer support roles, such as call centers, are often the brunt of verbal abuse. People call up wanting to vent and have a source to dispel their anger.

If this is you, understand when it's not your fault. Just like the path to productivity, you may need to take a break or step back. And, if all else fails, create a music playlist that helps you move on, with "Shake it Off" by Taylor Swift as the first song.

## **CUSTOMER SERVICE COMES DOWN TO CARING**

In the end, the skills of a customer service employee come down to caring.

Having empathy to understand the situation of each person a rep interacts with and the authentic desire to help them will go a long way.

Consider this marketing quote by Amazon CEO Jeff Bezos: "We see our customers as invited guests to a party, and we are the hosts. It's our job every day to make every important aspect of the customer experience a little bit better."

The best way to build a positive customer experience is by hiring employees with these 21 customer service skills, then giving them the ability to put those skills to work.<sup>136</sup>

## **AN EFFECTIVE CALL CENTRE**

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<sup>136</sup> <https://www.g2.com/articles/customer-service-skills>

## I SO PRAY, MY LORD

A call centre is often the face of an organization and the first point of contact for complaints and interfacing with an organization. An ineffective call centre will deter customers.

What makes a call centre effective?

- Knowledge of the product
- Creativity –do not stick to the script
- Attention to detail
- Organization
- Friendliness
- Calm under pressure
- Effective communication skills
- Avoid technical jargon
- Speedy resolution
- One stop centre
- Opportunity to ‘appeal’ or escalate complaint upwards

## PERFORMANCE AND REWARD MANAGEMENT

What is Performance Management

•Performance management is a process by which managers and employees work together to plan, monitor and review an employee's work objectives and overall contribution to the organization. Performance management is also known as a process by which organizations align their resources, systems and employees to strategic objectives and priorities. Performance management is the process of creating a work environment or setting in which people are enabled to perform to the best of their abilities. Performance management is a whole work system that begins when a job is defined as needed. It ends when an employee leaves your organization. Performance management is a process that provides:

- Feedback
- Accountability, and

- Documentation for performance outcomes.

It helps employees to channel their human resource talents toward achieving organizational goals. It is geared towards fulfilling the unique needs of each organization and its organizational culture. Performance management can focus on the performance of an organization, a department, employee, or even the processes to build a product or service, as well as many other areas.

### **HOW IS PERFORMANCE MANAGED?**

- Delivering regular relevant job feedback
- Setting and communicating clear performance expectations
- Linking performance to compensation clearly
- Identifying organizational career paths for employees
- Evaluating performance and delivering incentives in a fair and consistent manner
- Providing appropriate learning and development opportunities
- Recognizing and rewarding top performers

### **BENEFITS: WHY IS PERFORMANCE MANAGEMENT IMPORTANT?**

- Planning. With this valuable data in hand, companies can identify training and development plans.
- Enables an organization to implement best practices to achieve organizational goals.
- Aligning individual employee's day-to-day actions with strategic business objective
- Providing visibility and clarifying accountability related to performance expectations –every individual has performance targets.
- Documenting individual performance to support remuneration and career planning decisions
- Establishing focus for skill development and learning activity choice.
- Creating documentation for legal purposes, to support decisions and reduce disputes

### **ELEMENTS OF SUCCESSFUL PERFORMANCE MANAGEMENT SYSTEM**

1. Planning and Expectation Setting

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2. Monitoring
3. Development and Improvement
4. Periodic Rating
5. Rewards and Compensation

### **CHALLENGES OF PERFORMANCE MANAGEMENT**

- a) Poorly structured or vague strategy,
- b) Failure to communicate the strategy to stakeholders/staff,
- c) Failure to achieve buy-in of the strategy,
- d) Not measuring progress,
- e) Not holding at least quarterly strategy review sessions,
- f) Not taking the time to define success and celebrate it along the way,
- g) Not adapting to changing circumstances,
- h) Not giving your team the necessary authority or tools to accomplish their jobs.

### **WHAT IS PERFORMANCE REWARD?**

Performance is the carrying out or accomplishing of a task, action or function. Reward is a thing given in recognition of one's service, effort, or achievement. Performance reward can be by way of performance related pay. Performance rewards are aimed at motivating better staff performance. There must be a link between the goals of the organization and the tasks required of the employees.

Rewards target both performance and behaviour. They Should address 4 key areas:

- Compensation
- Benefits
- Recognition
- Appreciation

### **CHARACTERISTICS OF EFFECTIVE REWARDS SYSTEM**

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- a) Involves both management and employees in development and implementation. Employees should have a sense of ownership.
- b) Employees view it as worth their effort and worth participating in.
- c) Easily understood. Employees must understand the assessment criteria and how they earn rewards.
- d) Transparent. It should be open and not shrouded in secrecy.
- e) Reasonable. Must have attainable targets.
- f) Based on objective, measurable performance data and not subjective personal assessment.
- g) Fair.
- h) Must be linked to performance.
- i) Recognize both small and big achievements. Not every staff will have the opportunity of making a major contribution.
- j) Rewards teamwork and cooperation rather than individual achievements only.
- k) Reward given immediately or soon after employee achieves the desired performance.
- l) Match reward to the employee. One size does not fit all and it needs to be tailor-made.
- m) Combine both monetary and non-monetary rewards.
- n) Do not disclose cash value of the non-monetary tangible reward.
- o) Long term –not just a one off reward.
- p) Balance competitive and non-competitive rewards so that every employee has a chance of getting an award. It should not only be the high flying achievers to get awards.
- q) Make the rewards system part of the overall company policy.
- r) Change the rewards frequently –variety is the spice of life –to keep the rewards exciting.

## COMMUNICATION

### **Understanding Communication**

Communication is the imparting or sharing of information. Communication is 2 way process with 2 or more persons -someone to give and another to receive.

## **WHY IS COMMUNICATION IMPORTANT**

- Builds and maintains good working relationships
- Facilitates innovation
- Builds an effective team with improved morale and efficiency
- Managing employees
- Contributes to growth of the company
- Ensures transparency
- It is crucial to communicate effectively in negotiations to ensure you achieve your goals.
- Allows you to work from remote locations -your office is a smart phone and Internet connection.
- Enforced desired behaviour e.g. Dubai night clubs

## **COSTS OF POOR COMMUNICATION**

- Decreased productivity -confusion and loss of business
- Wastage due to poor handling of products
- Low morale
- Mistrust and suspicion
- Lost time because of misunderstood instructions
- Frustration
- Poor team work and people feeling left out
- Risk to health and safety

## **THE COMMUNICATION PROCESS**

The communication process is the steps we take in order to successfully communicate.

Components of the communication process include:

- A sender,
- encoding of a message,

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- selecting of a channel of communication,
- receipt of the message by the receiver and
- decoding of the message

### PURPOSES OF COMMUNICATION

- a) Communication is aimed at achieving results. Communication can be for a multiplicity of purposes:
- b) Building trust and consensus
- c) Creating awareness of something positive or impending danger
- d) Informing and educating
- e) Changing knowledge and filling knowledge gaps
- f) Influencing perceptions, attitudes and beliefs -Reagan-Mondale presidential campaign.
- g) Promoting action
- h) Changing behaviour.

### FORMS OF COMMUNICATION

- i. Verbal
- ii. Written
- iii. Non-verbal

### VERBAL & WRITTEN COMMUNICATION

- Phone voice call
- Social media –WhatsApp, Facebook etc
- Email
- Letters
- Fax
- Email



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- Newsletters
- E-conferencing

### NON-VERBAL COMMUNICATION

- Gestures are a good way of communicating.
- The hands and fingers can communicate messages from applause, to beckoning to insults.
- A wink can communicate a message, eyes wide can show surprise, pain!
- You say it best when you say nothing at all. If your partner gives you the silent treatment what does it mean?
- Dress can communicate a lot (LDC has Bar Course dress code)
- In era of emoji's this important form of non-verbal communication has to be used carefully. If your friend tells you they lost an uncle make sure you use emoji for crying not for laughing with tears.
- Demeanour -guilty look.
- Sound -drumming, whistles, horns
- Image is everything –(Onasis taking tea at 5 star hotel, Hip hop artiste using Ferrari in music video.
- Symbols -Royal Standard flying above Buckingham Palace, doves/olive branch, white flag.

### CHOOSING COMMUNICATION MEDIUM

- a) Cost
- b) Urgency and timeframe
- c) Mode received (it is normal practice to respond using the same medium used to receive the message)
- d) Literacy and education levels
- e) Availability of supporting technology
- f) Confidentiality
- g) Distance
- h) Scale of the organization
- i) Complexity

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- j) Need for permanent record (e.g. paper trail for financial transactions)
- k) Safety
- l) Practice/precedence and protocol
- m) Relationship between sender and recipient and seniority

### **BARRIERS TO EFFECTIVE COMMUNICATION**

- a) Language and loss in translation -Tower of Babel
- b) Use of offensive or abusive language –Stella Nyanzi
- c) Distance and physical separation
- d) Wrong choice of medium and poor visibility
- e) Lack of clarity in the message
- f) ‘Stage fright’ or lack of confidence
- g) Use of complicated language or technical jargon.
- h) Gender differences
- i) Noise and clutter -WhatsApp groups. You need to carefully follow thread -one person posting job promotion will swiftly be followed by another whose uncle has died so be careful before you post “That is great news!
- j) Misinformation (accidental or deliberate –Iraqi spokesman)
- k) Censorship -China, Uganda (UCC social media blockade)
- l) Cultural and generational diversity –Indians shake head yes, whites men holding hands are gay, colloquialism by youth. Use of social media. Western dating norms e.g. ok to meet future wife in bar, ‘who pays’ and the ‘3 date’ rule.

### **IMPROVING COMMUNICATIONS**

- Practice and preparation -in front of mirror
- Watch how to instructional videos
- Develops personal style -in era of conformity you need individuality
- Watch others -learn from the best

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- Research
- Understand your audience -lawyers use specialized language and phrases which you should not use with lay person e.g. 'I cannot see you', people have sensitivity to offensive or shocking images e.g. bodies & blood, inappropriate to mention ex partners in wedding speech.
- Simplify your message
- Appearance and dressing etiquette
- Right length of speech -wedding with 5hrs of speeches. Speeches should be short and to the point
- Connection/rapport with audience
- Appropriate use of humour
- Respect for titles Hon., Dr, prof, etc
- Prayer if all else fails.

## PHONE SKILLS IN COMMUNICATION

- Short and to the point
- Make official calls during official hours
- Identify yourself at the beginning
- Never 'BEEP'. Request call-back.
- Speak clearly, slowly and in a cheerful, professional voice is very important
- Use your normal tone of voice when answering a call –do not shout!
- Speak into the receiver/microphone.
- Plan what you want to say before you make the call.
- Don't allow interruptions during the call –avoid multitasking.

## CATCHY SLOGAN

- A catchy slogan draws the attention of your prospective client -enables your product to stand out in a crowded market.
- It should be short and witty with innuendo and double play on word

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- A good slogan will create an image in the readers mind and, in a few words, convey the image you want them to have of your goods or service

### EXAMPLES OF EFFECTIVE SLOGANS

- Just do it (Nike)
- Like sleeping on a cloud (Sealy)
- Milk from contented cows (Carnation)
- Save Money, Live Better (Wal-Mart)
- I'm lovin' it (McDonalds)
- When you care enough to send the very best (Hallmark)
- Finger Lickin' Good (KFC)
- The happiest place on earth (Disney World)
- It's the real thing (Coca-Cola)
- The best a man can get (Gillette)
- Betcha can't eat just one (Lays)

### SAYINGS OF THE WISE

Words don't always carry literal meaning -w often have sayings and phrases that communicate non-literal message. Examples of sayings:

- When elephants fight the grass suffers.
- Strong fences make good Neighbour's.
- A stitch in time saves nine.
- Easy come easy go.
- What is good for the goose is good for the gander.

### CATCHY NEWSPAPER & MAGAZINE HEADLINES

- A catchy headline is extremely important to bring the reader in to view an article or advertisement.

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- It includes words and thoughts designed to catch someone's eye and get that person interested in reading what follows the headline.
- Headlines use different tactics to capture your attention: use of names of celebrities and famous people, shocking numbers, wetting appetite (you won't believe what happened next).
- Don't over-promise (how to make a million dollars in three days)
- Avoid being intentionally misleading.
- A good headline is witty and gives your content better visibility.

## THE POWER OF BRANDING

- A brand is a unique identifying mark
- Brands are used by manufacturers and service providers to distinguish their goods and services from others
- Some brands are so strong they become verbs -Google, Uber etc
- Brands communicate quality and thus enable the brand owner to charge a premium price
- Formula 1 pays the Ferrari team about \$70 million (over 250 billion shillings) every year just to be in the championship irrespective of their performance.
- Imitation is the sincerest form of flattery
- TESCO own brand products
- Product placement in movies. Movie producers make money buy charging manufacturers and service providers to have their products and services featured in movies. Movies have wide coverage (movie theatres, video/DVD, reruns on TV) and can reach millions. Movie stars are seen as 'cool' and members of the public are likely to want to consume the same goods and services as their favourite stars

## EXAMPLES OF PRODUCT PLACEMENT

- a) A good example is Heineken and James Bond. Heineken reportedly paid 45 Million dollars (160 billion shillings) for Daniel Craig to take a swig replacing "shaken not stirred" Martini. The bond movie had a 300 million dollar budget.
- b) Harley Davidson motorcycles is rumoured to have paid close to 10 million dollars for the Avengers using their new Livewire motorcycle.
- c) Samsung paid 5 million dollars for Scarlet to use their tablet in Livewire.

- d) Brands typically pay 3-5 million dollars on a 3–8 second piece of exposure.
- e) Most money raised for product placement was by Smurfs 2 movie featured 39 different brands –the film covered the entire cost of its \$105 million dollar budget with \$150 million worth of product placement deals.

## TOP COMMUNICATION FAILURES

- a) Misunderstanding the subject; In the age of social media is common to misunderstand the subject. In 2014 there was a pair of Twitter hashtags #whyIStayed and #whyILeft, they're about domestic violence where abuse victims shared their stories in the wake of the Ray Rice abuse incident. Digiorno pizza misunderstood and used this trending hashtag to advertise themselves: #whyIStayed You had pizza. Susan Boyle, a Scottish singer, launched a new album. As part of the album's promotional activities she organized a launch party –Susan Album Party with the hashtag #susanalbumparty –i.e. Susan Album Party. Many read it as sus-anal-bum-party! It isn't funny

In 1996 Pepsi ran a promotional campaign where it offered to exchange Pepsi points for different stuff such as a t-shirt, leather jacket, shades. The slogan of this campaign was "the more Pepsi you drink, the more great stuff you're going to get."

The creators of this commercial decided to prank a bit and offered Harrier Fighter for 7 000 000 Pepsi points. They couldn't even imagine that someone would take it seriously. But, one John Leonard did.

He noticed some fine print: in place of labels, consumers could buy Pepsi points for ten cents each. He quickly figured out that he need \$700,000 to buy the 7M Pepsi points for the Harrier Jet. And he did it. Pepsi obviously refused to give Leonardo this prize. A court granted a summary judgment in favour of Pepsi and ruled that "no objective person could reasonably have concluded that the commercial actually offered consumers a Harrier Jet."

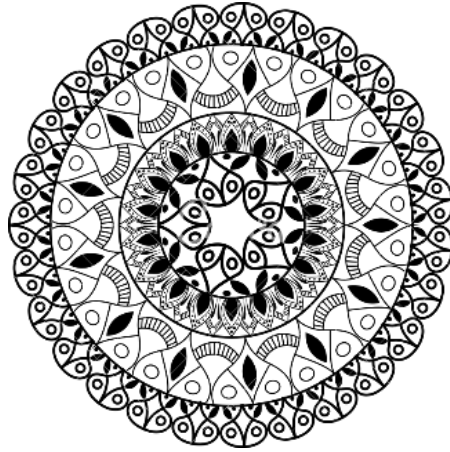
- b) If it isn't broken, don't fix it. Old Coke is better than New Coke In 1985 Coca-Cola decided to change its 100-year formula. According to blind taste tests, Cola-Cola learned that customers prefer the sweeter taste of Pepsi. Coca-Cola decided to improve and created "New Coke". It became a major marketing failure. People didn't like this new better formula and demanded the old one back. After a while, "New Coke" was taken off the market.
- c) Changing circumstances can lead to total failure.

## KEY TIPS IN COMMUNICATIONS

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- a) A picture is worth a thousand words
- b) China has 8 languages. There is no language called Chinese. The most commonly spoken of them in Mandarin. The Chinese were able to communicate and build a powerful dynasty because of one written language with the same characters used for all the eight different languages.
- c) It is not what you say. It's how you say it.
- d) Communication not static -communication evolve over time. (e.g. meaning of turning your back)
- e) We live in the Information age. Information is power.
- f) Effective communication is an integral part of an effective management system in any organization
- g) Perception is key.

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Volume Two

# **ACCOUNTING FOR LAWYERS**



## INTRODUCTION

Like any other profession, accountancy has rules. These are normally, in order for the consistency to be exhibited, enshrined in a framework. Every system has users; so the outputs of the process of financial accounting have interested users. These outputs must have characteristics that make them useful. These together with the components of the accounting system are exemplified below

## WHAT IS FINANCIAL ACCOUNTING?

Financial Accounting is the art and science of recording and classifying financial transactions in the books, summarizing and communicating financial information through production of financial statements/reports, and interpretation of the operating results portrayed in financial statements/reports to facilitate decision-making.

It can also be defined as : The process of identifying, measuring and communicating economic information to permit informed judgments and decisions by the users of accounting<sup>137</sup>

## BY WHAT MEANS CAN WE PROVIDE FINANCIAL ACCOUNTABILITY?

Managers and accountants are required to show evidence of good financial management by submitting accountability of money received and spent. The following are methods of accountability:

### 1. Production of documentary evidence

This involves producing documents as evidence of money received and well spent. The key accountability documents are receipts, vouchers, invoices, etc.

- Receipt – is a document prepared as evidence of money received
- Voucher – is a document that shows details and supports payment
- Invoice – is a document submitted by suppliers demanding payment for goods and services provided on credit

### 2. Books of accounts

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<sup>137</sup> American accounting association 1966

After documenting transactions, these transactions should be recorded into books of accounts. In case of a query or even in the normal monitoring of transactions by owners of the wealth, examination of books of account is normally carried out. In order to account properly, transactions must be accurately recorded into books of accounts e.g. a cashbook.

### 3. Financial statements / reports

Financial statements (also called final accounts) are prepared to show results of the operations for the year ended. The major financial statements are the income statement, the balance sheet and the cash flow statements. Some monthly statements such as bank reconciliation statements, budget performance reports and monthly trial balance are also required for accountability purposes in many organisations.

### 4. Output / result

Apart from paper accountability, there is need for tangible outputs and concrete results to show evidence of money well utilized. For example, if someone is given UGX 500 million for building classroom blocks, the first accountability to be looked at are the classrooms themselves – some-times called effectiveness.

### Why accounting?

The ultimate role of accounting is to provide information to decision makers. Besides that, preparation of accounts plays the following roles:

#### 1. Ascertainment of profit and loss

One of the main purposes of any business is to make profits. For this reason, accurate and complete recording of all business transactions is essential because this information will be helpful to determine whether there was a profit or loss in any trading period.

#### 2. Assessment of tax

Governments in all countries impose taxes. For the accurate assessment of tax, accurate records must be maintained properly; otherwise, a business enterprise may be required to pay high taxes to the government. Accounting therefore forms an objective and reliable basis of computing taxes.

#### 3. To facilitate the credit transactions

Most business transactions are made on credit basis. In this case, goods are purchased or sold without cash payment. These transactions are made on the basis of promises to make payments in future. Without credit transactions, business cannot be expanded beyond certain limits. If goods are purchased from a supplier on credit basis, then this supplier is known as the creditor. Similarly, if goods are sold to a customer on credit then this customer is known as a debtor. Accounting records facilitate such credit transactions because these records will determine the amounts due to creditors and due from debtors.

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For easy monitoring of debtors and creditors, proper accounting records must be maintained. They also act as a Base for credit facilities for example, a loan. A business enterprise can be able to acquire credit from financial institution once it has proper and accurate accounting records.

### 4. A tool for control

A business enterprise can maximize its profits by increasing the gap between income and expenses. Proper control of unnecessary expenses and misappropriation of funds is essential. A proper and accurate accounting system will be helpful to maintain this control.

### 5. Base for further planning

For further expansion, a business enterprise can formulate its plans based on the recent and past achievements. Accounting records can provide sufficient data relating to sales, profit, investments etc, for making decision about the future programme.

### 6. Monitoring of management

Preparation of accounts helps shareholders to monitor management and other stakeholders to evaluate the performance of the organisation. The managers are not the owners of the business and therefore accounting forms an objective basis for monitoring the actions of managers by the owners of the business.

## USERS/INTERESTED PARTIES OF ACCOUNTING INFORMATION

It is easy to assume that the only users of accounting information are shareholders- since it is a requirement of the company law that shareholders must receive periodic accounting statements. However, in reality there are many users of accounts. Every organisation whether profit making or not has people or parties interested in it. These interested parties (stakeholder) have to make decisions connected with the organisation. Accounting information is very necessary if decisions are to be made accurately and rationally. Various parties are interested in accounting information to facilitate their decision-making. Accounting information is in form of financial statements/ reports, entries in books of accounts and business documents. The users or decision makers interested in accounting information are broadly divided into two groups, i.e. internal users and external users.

## INTERNAL USERS

These are involved in the day to day running of the organisation.

### 1. Management

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The managers of the business will want to know how things are going. They need financial information in order to plan for the future; they then need more up-to-date information in order to check whether actual performance is on target. This process is known as controlling the costs and finances. In accounting it is known as management accounting. So, management accounting is done by the managers, for the managers, for the purposes of planning and control.

### 2. Employees

Employees (and organisations that represent them – e.g. trade unions) require information about the stability and continuing profitability of the business. They are crucially interested in information about employment prospects and the maintenance of pension funding and retirement benefits. They are also likely to be interested in the pay and benefits obtained by senior management. Employees will, therefore look for information on:

- Revenue and profit growth
- Levels of investment in the business
- Overall employment data (numbers employed, wage and salary costs)
- Status and valuation of company pension schemes / levels of company pension contributions.

## EXTERNAL USERS

They are external in the sense that they are not involved in the day to-day running of the organisation.

### 1. Shareholders

These are the primary stakeholders of the business because they invest capital in the business. Investors are concerned about risk and return in relation to their investments. They require information to decide whether they should continue to invest in a business. They also need to be able to assess whether a business will be able to pay dividends, and to measure the performance of the business' management overall. The key accounting information for an investor is therefore:

- Information about growth – sales, volumes
- Profitability (profit margins, overall level of profit)
- Investments (amounts invested, assets owned)
- Business value (share price)
- Comparative information of competitors

### 2. Potential investors

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These need accounting information in order to be able to decide whether investing in a company is worthwhile. This may be with help of an analyst who analyses the company's past and projected financial performance before they can buy shares in it. The key accounting information for a potential investor is therefore:

- Information about growth – sales, volumes
- Profitability (profit margins, overall level of profit)
- Investments (amounts invested, assets owned)
- Business value (share price)
- Comparative information of competitors

### 3. Creditors

Suppliers and trade creditors require information that helps them understand and assess the short-term liquidity of a business. They need accounting information to establish the credit worthiness of the customers or clients i.e. is the business able to pay short-term debt when it falls due? Creditors will therefore, be looking for information on:

- Cash flow
- Management of working capital
- Payment policy

### 4. Lenders

Banks and financial institutions who lend money to a business require information that helps them determine whether loans and interest will be paid when they fall due. The key accounting information for lenders therefore:

- Cash flow
- Security of assets against which the lending may be secured
- Investment requirements in the business

### 5. Debtors

Customers and trade debtors require information about the ability of the business to survive and prosper. As customers of the company's products, they have a long-term interest in the company's range of products and services. They may even be dependent on the business for certain products or services. Customer will be particularly interested in:

- Sales growth

- New product development
- Investment in the business (e.g. production capacity)

#### 6. Donor/funding agencies

Non profit-making organisations like NGOs get funding from donor agencies. These agencies are always interested in making sure that the money they donate is used to achieve the objectives for which it was released. They monitor utilization of their money by examining accounting records i.e. financial reports, books of accounts and documents of the organisation that they support.

#### 7. Government

There are many government agencies and departments that are interested in accounting information. For example, the Inland Revenue needs information on business profitability in order to levy and collect corporation tax. Value Added Tax; local government need similar information to levy local taxes and rates. The government also needs accounting information from state owned public companies existing alongside private ones, to monitor their performance. It needs accounting information from companies to enable it analyse the effect its policies have on business. This enables formulation of policies that promote sector development.

#### 8. Competitors

These need accounting information of firms in the same industry so as to judge whether they are performing poorly or fairly in comparison with other players in the same business.

#### 9. General public

These include individuals and organisations which ensure that businesses make their profits in a socially acceptable manner without damage to the environment and consumers. They have specific interest in the activities and performance of businesses. Environmental pressure groups push for minimization of pollution of the environment while consumer groups like Uganda National Bureau of Standards (UNBS) try to ensure that businesses offer safe products and don't charge high prices for poor quality products.

### **COMMON FINANCIAL STATEMENTS AND PURPOSE**

The financial statements are the outputs of an accounting system. A complete set of financial statements includes the following components:

- 1) Statement of profit or loss
- 2) Statement of changes in equity
- 3) Statement of financial position
- 4) Statement of cash flows

5) Notes to the financial statements

## QUALITATIVE CHARACTERISTICS OF FINANCIAL STATEMENTS

The qualitative characteristics of the Financial Statements are broadly categorized as;

1. Fundamental
2. Enhancing

The fundamental Qualities of the Financial Statements are;

1. Relevance
2. Faithful Representation

The enhancing qualities of the Financial Statements are;

1. Understandability
2. Verifiability
3. Timeliness
4. Comparability

## FUNDAMENTAL CHARACTERISTICS

i) Relevance

This implies that, to be useful, accounting information must assist a user to form, confirm or maybe revise a view - usually in the context of making a decision (e.g. should I invest in this business? should I lend money to this business? Should I work for this business?). Relevant accounting information is capable of making a difference in a decision by helping users to form predictions about the outcomes of past, present, and future events or to confirm or correct prior expectations. Information can make a difference to decisions by improving decision makers' capacities to predict or by providing feedback on earlier expectations. The problem is how to identify these needs given the variety of users.

ii) Faithful representation

Information in financial reports is reliable if it is free from material error and bias and can be depended upon by users to represent events and transactions faithfully. Information is not reliable when it is purposely designed to influence users' decisions in a particular direction. This implies that the accounting information that is presented is truthful, accurate, complete (nothing significant missed out) and capable of being verified (for

instance, by a potential investor). The complexities of modern business make reliability difficult to achieve in all cases.

## ENHANCING CHARACTERISTICS

### i) Timeliness

To be useful, information must be provided to users within the time period in which it is most likely to bear on their decisions. If information is not available when it is needed or becomes available so long after the reported events that it has no value for future action, it lacks relevance and is of little or no use. Timeliness alone cannot make information relevant, but a lack of timeliness can rob information of relevance it might otherwise have had.

### ii) Understandability

This implies the expression, with clarity, of accounting information in such a way that it will be understandable to users - who are generally assumed to have a reasonable knowledge of business and economic activities. In other words, the information should be in a form which is understandable to user groups. However, this poses problems. Users have very different levels of financial sophistication in addition; the very complexity of business transactions makes it difficult to provide adequate disclosure whilst maintaining simplicity.

### iii) Comparability

Information about a particular organization gains greatly in usefulness if it can be compared with similar information about other organizations; and with similar information about the same organization for some other period or some other point in time. Comparability between enterprises and consistency in the application of methods over time increases the informational value of comparisons of relative economic opportunities or performance. The significance of information, especially quantitative information, depends to a great extent on the user's ability to relate it to some benchmark.

### iv) Verifiability

A knowledgeable independent person can verify that the financial statements show a true and fair view.

## BOOKKEEPING

As defined by Carter, 'Book-keeping is a science and art of correctly recording in books-of accounts all those business transactions that result in transfer of money or money's worth'. Book-keeping is an activity concerned with recording and classifying financial data related to business operation in order of its occurrence.



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Book-keeping is a mechanical task which involves:

- Collection of basic financial information.
- Identification of events and transactions with financial character i.e., economic transactions.
- Measurement of economic transactions in terms of money.
- Recording financial effects of economic transactions in order of its occurrence.
- Classifying effects of economic transactions.
- Preparing organized statement known as trial balance.

### **DISTINCTION BETWEEN BOOK-KEEPING AND ACCOUNTING**

The distinction between book-keeping and accounting is given below:

Bookkeeping	Accounting
1. Out put of book-keeping is an input for accounting	Output of accounting permit informed judgments and decisions by the user of accounting information.
2. Purpose of book-keeping is to keep systematic record of transactions and events of financial character in order of its occurrence.	Purpose of accounting is to find results of operating activity of business and to report financial strength of business.
3. Bookkeeping is a foundation of accounting	Accounting is considered as a language of business
4. Book-keeping is carried out by junior stuff	Accounting is done by senior stuff with skill of analysis and interpretation
5. Objects of book-keeping is to summarize the cumulative effect of all economic transactions of business for a given period by maintaining permanent record of each business transaction with its evidence and financial effects on accounting variable	Object of accounting is not only bookkeeping but also analyzing and interpreting reported financial information for informed decisions

## ACCOUNTING CONCEPTS/PRINCIPLES

Accounting concepts are the basic rules, assumptions, and conditions that define the parameters and constraints within which the accounting operates. In other words, accounting concepts are the generally accepted accounting principles, which form the fundamental basis of preparation of universal form of financial statements consistently.

The clear objective of financial statements has to be that the accounts fairly reflect the true "substance" of the business and the results of its operation. The theory of accounting has, therefore, developed the concept of a "true and fair view". The true and fair view is applied in ensuring and assessing whether accounts do indeed portray accurately the business' activities.

To support the application of the "true and fair view", accounting has adopted certain concepts which help to ensure that accounting information is presented accurately and consistently.

### 1. Business Entity Concept

This convention seeks to ensure that private financial transactions and matters relating to the owner of a business is recorded and separated from financial transactions that relate to the business. It should be noted that a business exists separate from its owner. A business owner usually owns personal items as well as business items. The business' financial records and reports should not be mixed with the owner's personal records and reports. For instance, a business owner may incur rent for his home and rent for the business. Only the rent related to the business should be recorded in the business' financial records while the home rent is recorded in the personal financial records. The business entity concept ensures that the amount invested by the owners in the business is defined (capital) and allows a return on capital employed to be computed to show whether the investment is worthwhile.

#### Limitation

The main limitation of the concept is that the owner and the business are actually inseparable. For instance if a sole trader sells and dwells on the same premises, then rent and utilities paid will be difficult to apportion between the owner and the business especially if there are no clear apportionment bases.

### 2. Monetary measurement / unit of measurement concept

According to this concept, all transactions to be recorded must be quantified in monetary terms, since money is a common denominator for all transactions e.g. cost, sales, the value of stocks, machinery, debts and investments. This is because a record of transactions is quantified and assessed in a monetary unit. Thus it is assumed that the monetary unit is capable of acting as the common denominator of the values to the point of determining exchangeable equivalents

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Financial data is generally quantified and the measurements expressed in units of money. Presentation involves adding, subtracting, multiplying and dividing numbers depicting economic things of value and events.

### Limitations

- It assumes money has a stable value over time, yet actually money may lose value with time.
- It limits recognition of transactions to those that can be quantified and leaves out qualitative factors that can have a direct impact on the business e.g. workforce skill, morale, market leadership, brand recognition, quality of management etc

### 3. Going Concern/ continuity

This requires the accounting records to be maintained in such a way that the business is seen to continue in its foreseeable future. That is, the financial reports are prepared with the expectation that a business will remain in operation indefinitely. This makes it possible for the accountant to prepare or project estimates for a long period into the future.

For example, a business bought machinery for shs 25,000,000/-. This machinery is expected to last for 10 years. The yearly depreciation therefore is recorded and reported based on the expected life of the machinery. At the end of every year, the book value (cost less accumulated depreciation) is reported.

A business is expected to continue indefinitely even if the owner retires or sells the business. If a business is sold, the new owner is expected to continue the business' operations. Continuity of operations facilitates the allocation of both revenues and expenses to the pertinent accounting periods. Without this presumption, Accrual Accounting (to be discussed here under) would have no foundation. As the accounting entity stops being a going concern, the accounting approach changes from accrual to realization and liquidation.

### 4. Periodicity and disclosure concept

This requires a company to prepare and disclose financial reports at the end of every accounting or financial year. This enables comparability, timely performance measurement and tax computations. Of course, the impact of transactions is measured for a specific time period usually known as the financial year. Thus, it is assumed that the continuous life time of the entity (see going concern assumption) can be broken down into specific time periods. Then the results of operation for each time period can be measured. At the end of each period, a "static" picture of the resources and claims to those resources is taken. This depicts the financial position of the entity at that specific point in the lifetime of the entity. In practice, this financial year has come to be 12 months period and in Uganda, this principle has been enshrined in law (see companies' Act of Uganda).

### 5. Historical cost

This principle requires transactions to be recorded at the price ruling at the time, and for assets to be valued at their original cost. That is, the actual amount paid for items bought is recorded. The actual amount paid for an item in a business transaction may be different from the value. For instance, office furniture is valued at shs

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12,000,000/. A business arranges to buy the furniture at shs 9,000,000/. The amount recorded in the accounting records for the office furniture is the historical cost – shs 9,000,000/ - the actual amount paid.

In the process of acquiring assets by an entity, such assets are valued and recorded in books of accounts at the cost at which they were acquired i.e. the price paid. Thus, assets are entered in accounting records at their cost. This is generally called historical cost basically because it is always the valuation of a consummated transaction.

### Limitation

During inflation, historical cost will not reflect the true value of the assets of the business. e.g. if an asset was bought at shs.1,000,000/ at the beginning of the year, and the annual inflation rate is 90%, its value at the end of the year will be shs.1,900,000/. The historical cost concept will require shs.1, 000,000/ and not shs.1, 900,000 to be recorded.

### 6. Realization concept

This concept requires that transactions (and any profits arising from them) are recognized and recorded at the point of sale or transfer of legal ownership – rather than just when cash actually changes hands. For example a company that makes a sale to a customer can recognize that sale when the transaction is legal – at the point of contract. The actual payment due from the customer may not arise until several weeks (or months) later – if the customer has been granted some credit terms.

For example, a business sells goods for shs 2,500,000. The business agrees to an initial payment of shs 1,000,000 with the remaining balance to be paid in two monthly installments of shs 750,000/ each. The full amount of shs 2,500,000/ of revenue should be recorded at the time of sale even though shs 1,500,000/ will be paid later.

Note that a realization is when a sale is made to a customer. The basic rule is that revenue is created at the moment a sale is made, and not when the price is later paid in cash. Profit can be taken to the profit and loss account on sales made even though the money has not been collected.

The gist of this concept is that in order to determine the nature and magnitude of the impact of transactions on the financial position of the accounting entity, inflowing values are recognized if and when the earning effort is substantially expended or completed. Revenues represent actual or expected cash inflows or the equivalent from the ongoing or central operations of the enterprise during the accounting period. Realization in the most precise sense means the process of converting non-cash resources and rights into money and most precisely used in financial accounting and reporting to refer to sales of assets for cash or claims to cash. Recognition is the process of formally recording or incorporating an item into the financial reports of an entity.

### 7. Materiality

This requires the recognition of only material items and excluding immaterial or trivial items. Information is material if its omission or misstatement could influence the economic decisions of users taken on the basis of the financial reports. Financial statements should therefore show material items separately, but immaterial items

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may be aggregated with amounts of a similar nature. For example buying furniture for shs 14,000,000/ represents an amount large enough to significantly affect the amount of net income reported if recorded as an expense. Therefore, the furniture should be recorded as an asset and depreciated each year of its useful life.

### 8. Consistency

According to this concept, transactions and valuation methods are treated the same way from year to year, or period to period. Business decisions are often made by comparing current financial reports with previous financial reports. Users of accounts can therefore make more meaningful comparisons of financial performance from year to year. Accounting information recorded and reported differently each accounting period makes comparisons from one accounting period to another impossible. Where accounting policies are changed, companies are required to disclose this fact and explain the impact of any change.

### 9. Prudence/ conservatism

This concept requires the profits are not recognized until a sale has been completed. In addition, a cautious view should be taken for future problems and costs of the business as soon as there is a reasonable chance that such costs will be incurred in the future i.e. provide for all possible losses, for example, provision for bad debts. The concept can be summarized by the phrase 'anticipate no profit and provide for all possible losses'. Further still, the concept tends to undervalue assets i.e. whenever there are alternative methods of valuing an asset, an accountant should choose the one that leads to a lower value or profit and a higher liability. This stems from the accountants' fear that if they prepare the financial reports with too much optimism they may overstate profits and cause dividends to be paid out of capital if these profits are not realized.

### 10. Accrual concept

This requires the recognition of items at the occurrence of the transaction and not when cash is received or paid. For example, Income is recorded as earned even though it might have not been received. The portion of income that has not been received is recorded as an asset (accrued income or debtors). Expenses or costs should be recorded as incurred although cash may not have been paid. For example, if rent expenses paid by the year close was shs 1,500,000/ and yet some electricity equivalent to shs 200,000/ was used but not paid for, the amount of rent expense be considered should be shs. 1,700,000/ (i.e. 1,500,000/ + 200,000/). The unpaid shs.200,000/ should be recorded as an accrued expense. It should be recorded as current liability in the balance sheet.

### 11. Matching concept

This concept requires that revenues from business activities and expenses associated with earning that revenue are recorded in the same accounting period. Business activities for an accounting period are summarized in financial reports. To adequately report how a business performed during an accounting period, all revenue earned as a result of business operations must be reported. Likewise all expenses incurred during the same accounting period in producing the revenue must be reported. Matching expenses with revenue gives a true picture of business operations for an accounting period. for example, if income of shs.50,000,000/ was earned during a particular accounting period, and rent of shs.1,800,000/ had been paid for one and half years, not the whole shs1,800,000 should be written off or subtracted from the shs.50,000,000/ because part of the rent

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belongs to the next year. The correct amount to be subtracted from the income shs.50, 000,000/ is shs.1, 200,000/ and not shs.1, 800,000/. The difference is recorded as prepaid rent.

Likewise if electricity expenses paid was shs.500,00/ but some electricity equivalent to 200,000/ was used but not paid, that amount should as well be matched against the income i.e. the amount of electricity expense to be subtracted from income of shs.50,000,000/ should be shs.700,000/ (i.e. 500,000/ + 200,000/). The unpaid shs.200, 000/ should be recorded as an accrual.

Accrual accounting records the financial effects of transactions and other events and circumstances in the period in which they take place rather than only in the periods in which cash is received or paid. The accounting process recognizes that the buying, producing, selling and other operations of the enterprise during a period, as well as other events that affect enterprise performance, often do not coincide with cash receipts and payments of the period.

Precisely then, recognition of revenue, expenses, gains and losses and related increments and decrements in assets and liabilities including matching of costs and revenues, allocation and amortization – is the essence of using accrual accounting to measure performance of commercial enterprises.

### 12. Substance over form

This states that transactions and other events should be recorded in accordance with financial and economic reality (substance) other than their legal form. E.g. in a hire purchase, the buyer takes possession and use of the asset but does not become the legal owner until the last instalment has been paid. Though he is not the legal owner, he has to recognize this transaction in his books.

### 13. Duality concept (dual aspect)

This is the basis of double entry book keeping and stems from the fact that every transaction has a double (dual) effect on the position of a business as recorded in the accounts. For example when an asset is acquired, either another asset (cash) is reduced, or a liability (promise to pay) is acquired, at the same time. When a business borrows money, a liability to the lender is created, and at the same time an asset (cash) is increased. It follows that the assets of the business are equalled by claims on the business; either by creditors or owners for the funds they have invested in the business and which have been translated into assets for use by the business. The balance sheet which summarizes assets and claims must therefore balance. The double entry system is further explained in Topic three

## PREPARATION OF BOOKS OF ACCOUNTS THE ACCOUNTING EQUATION

Basic accounting equation

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This equation is the framework of tracking money as it flows in and out of an economic entity. The two basic aspects of an entity is: what it owns and what it owes as a result of double entry. Assets, liabilities and owners' equity are the three components of accounting equation that makeup a company's statement of financial position.

The form in which we see accounting today is possible because of LucaPacioli, a Renaissance era monk. He developed a method that tracks the success or failure of trading ventures over 500 years ago. This method is known as the "double-entry system". In a double-entry system the core theme is that an economic entity has a collection of assets and corresponding claims against those assets. But these claims are divided into two; claims of creditors and owners.

For every debit there must be a credit, and viceversa.

The equation may be stated as:

Assets = liabilities + owner's equity

Accounting Equation demonstrates the dual aspect of a transaction and proofs that Debit=Credit. Here is a table to show you effects of transactions on accounting equation. To better appreciate the accounting equation, we need to define the elements of the Financial Statements.

### **ASSETS**

An asset is resource controlled by the entity as a result of past events and from which future economic benefits are expected to flow to the entity. Assets can be divided into non-current assets, intangible assets and current assets

#### Non-current assets

These are assets expected to be held in the business for a period of more than one year or operating cycle. Examples are land, motor vehicles, machinery, plant and equipment, computers, furniture, fixtures and fittings.

#### Intangible assets

These are long-term resources that benefit business operations, they usually lack physical substance or form and have uncertain benefits. Examples are patent rights, trademarks, copyrights, franchise, treasury bills, investments in shares and goodwill.

#### Current assets

These are assets that are expected to be sold, collected, or used within one year or within the company's operating cycle, whichever is longer. Examples are cash, short term investments, accounts receivable, inventory and prepaid expenses.

## **LIABILITIES**

A liability is present obligation of the entity arising from past events, the settlement of which is expected to result in an outflow from the entity of resources embodying economic benefits. Liabilities maybe legally enforceable via contractor law, but need not be, i.e., they can arise due to normal business practice or customs. Liabilities can be divided into non-current and current liabilities.

### **Non-current liabilities**

These are obligation not due within one year or operating cycle, whichever is longer. Examples are long term bank loans, bond payables, mortgages and lease obligations.

### **Current liabilities**

These are obligations due to be paid or settled within one year or operating cycle. Examples are accounts payables, bank overdraft, accrued expenses, tax payables, short term bank loans.

## **EQUITY**

Equity is a residual interest in the assets of the entity after deducting all its liabilities. Equity has different components like; ordinary share capital, Share premium, revaluation surplus, translation gains and accumulated profits/retained earnings.

### **Income**

Income is an increase in economic benefits that result in increases in equity(other than those related to contributions from shareholders).Income includes both revenues(resulting from ordinary activities)and gains.

### **Expenses**

Expenses are decreases in economic benefits that result in decreases in equity(other than those related to distributions to shareholders).Expenses include losses that are not the result of ordinary activities

## **DOUBLE-ENTRY ACCOUNTING**

### **Introduction**

The double entry system of accounting recognizes the fact that every business transaction has two effects; that of the business 'receiving' (+), and that of the business 'giving' (-). This principle forms the basis of accounting.

The basic unit of double entry system is the account.

Accounts are a separate record that is kept of the increase and decrease in each asset, each liability, and each aspect of owner's equity.



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### Accounts Standard Form

Account title and number are located at the top and identify each account as an asset, liability, or aspect of owner's equity.

- Debit side – left side
- Credit side – right side

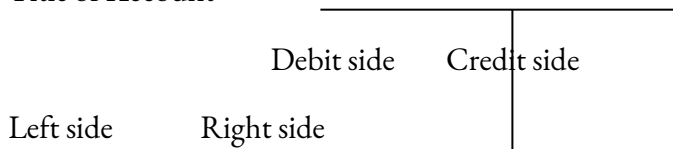
The debit side and the credit side of an account contain the following columns:

- Date column – record date of transaction
- Item column – record description, if necessary
- P.R./folio column – record posting reference
- Debit or credit column – record amount

### T- Accounts:

- Simplified version of the standard form of account
- Looks like the capital letter T.
- Contains title, debit and credit side

Title of Account



The table below summarizes the items that are represented by debits and credits.

<p>A debit entry represents</p> <p>1) An increase in the value of an asset</p> <p>Or</p> <p>2) A decrease in the amount of a liability</p> <p>Or</p> <p>3) An item of expenditure</p>	<p>A credit entry represents</p> <p>1) A decrease in the value of an asset</p> <p>Or</p> <p>2) An increase in the amount of a liability</p> <p>Or</p> <p>3) An item of income</p>
---	---

Exercise

1. Show the following transactions, as they are entered in the double entry system
  - a) Sold goods for cash UGX 8,000
  - b) Bought Furniture for UGX 5,000 and paid by cheque
  - c) Bought goods in trade for UGX 3,000 on credit
  - d) Part payment of UGX 1,000 cash was made to a creditor
  - e) Tom was paid UGX 2,000 cash
  - f) Some furniture, which had cost UGX 3,000, sold for cash at cost.
2. Show the following transactions, as they are entered in the double entry system
  - i) Bought goods in trade for UGX 7,000 on credit
  - ii) Sold goods for UGX 5,000 cash
  - iii) Sold goods on credit for UGX 2,000
  - iv) Paid Salaries UGX 2,000 cash
  - v) Bought Goods UGX 3,000 cash
  - vi) Sold goods UGX 6,000 by cheque
  - vii) Paid creditors UGX 3,000 by cheque

## ACCOUNTING CYCLE

When complete sequence of accounting procedure is done which happens frequently and repeated in same directions during an accounting period, the same is called an accounting cycle.

### Steps/Phases of Accounting Cycle

The steps or phases of accounting cycle can be developed as under:

- i) Recording of Transaction: As soon as a transaction happens it is at first recorded in subsidiary book.

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- (ii) Journal: The transactions are recorded in Journal chronologically.
- (iii) Ledger: All journals are posted into ledger chronologically and in a classified manner.
- (iv) Trial Balance: After taking all the ledger account closing balances, a Trial Balance is prepared at the end of the period for the preparations of financial statements.
- (v) Adjustment Entries: All the adjustments entries are to be recorded properly and adjusted accordingly before preparing financial statements.
- (vi) Adjusted Trial Balance: An adjusted Trail Balance may also be prepared.
- (vii) Closing Entries: All the nominal accounts are to be closed by the transferring to Trading Account and Profit and Loss Account.
- (viii) Financial Statements: Financial statement can now be easily prepared which will exhibit the true financial position and operating results

## ACCOUNTING – CLASSIFICATION

### (a) Financial Accounting

It is commonly termed as Accounting. The American Institute of Certified Public Accountants defines Accounting as “an art of recoding, classifying and summarizing in a significant manner and in terms of money, transactions and events which are in part at least of a financial character, and interpreting the results thereof.”

### (b) Cost Accounting

According to the Chartered Institute of Management Accountants (CIMA), Cost Accountancy is defined as “application of costing and cost accounting principles, methods and techniques to the science, art and practice of cost control and the ascertainment of profitability as well as the presentation of information for the purpose of managerial decision-making.”

### (c) Management Accounting

Management Accounting is concerned with the use of Financial and Cost Accounting information to managers within organizations, to provide them with the basis in making informed business decisions that would allow them to be better equipped in their management and control functions.

## SOURCE DOCUMENTS

The start of the bookkeeping process begins with accounting source documents -the paperwork. Source documents are an integral part of the accounting and bookkeeping process. Any time a business spends or receives money, a source document is created.

In most cases, when a business transaction is carried out a document is produced which contains the details of each transaction. Source documents include receipts, bills, invoices, statements, cheques etc. These are usually kept in physical files and can also be digitized.

These documents get their name from the fact that they are the origin of the information that is recorded into the accounting books. Both businesses (or people) involved in the transaction will get a copy of the accounting source document produced. The documents come in all sorts of shapes, sizes, colours and types of paper.

Every document has a few things in common:-

- The transaction date
- The amount
- The name of both businesses/people
- A reference number
- A description of the transaction

### **Why are source documents important?**

Source documents exist to provide conclusive evidence of a transaction, otherwise known as an “audit trail”.

- Enable preparation of books of accounts.
- Enable efficient bank reconciliation.
- Enable efficient filing of taxes.
- Easier Audit Preparation.

### **EXAMPLES OF SOURCE DOCUMENTS**

1. Receipts
2. Sales/Purchase Invoices
3. Payment voucher

4. Cheques
5. Credit/Debit Notes
6. Delivery Notes
7. Purchase Orders
8. Requisition Documents
9. Goods Received Notes
10. Deposit/paying Slips

## **BOOKS OF PRIME /ORIGINAL ENTRY**

### **Subsidiary books**

The books used to record all transactions of a particular category prior to posting to the ledgers are the books known as subsidiary books or books of prime entry. These are generally called the books of original entry.

These include;

- 1) Purchases day book / journal
- 2) Sales day book / journal
- 3) Purchases Returns / Returns outwards journal
- 4) Sales Returns / Returns inwards journal
- 5) Petty Cash book
- 6) General Journal

### **Cash Book**

Receipts and payments are recorded in a book called the cashbook. The cashbook therefore is a book in which are recorded detailed particulars of all moneys received and paid. From the beginning of the double entry bookkeeping, businesses have found that a very large number of transactions consist of receiving and paying sums of money. Originally, these transactions involved actual payment and receipt of cash. Hence the need to draw and keep a cashbook

Cash Book Types

- a) Single column

b) Two column

c) Three column

**Single Column Cash Book**

This is a type of cashbook maintained where small business owners retain cash received for use in the business and therefore the cash received is debited in the only cash column. Moreover, where the money is paid out from cash, the entry is credited in the only cash column. This traditional type of cashbook is phasing out since almost every business owner operates an account with the bank. Thus, giving rise to a two-column cashbook.

**Two Column Cash Book**

This is the most commonly used format of the cashbook. It involves recording bank and cash transactions. Bank transactions are recorded in the bank column and cash transactions are recorded in the cash column on Debit and Credit side respectively.

Example

Date	Details	Cash	Bank	Date	Details	Cash	Bank
2004							
Oct 1	Bal b/f		10,000	2	Rent		1000
2	Cash sales	3300		10	Purchases	4000	
3	Debtors	2500		11	Fuel	2000	
9	Rent income	3000		19	Telephone		1500
30	Interest Income		20,000	29	Payments to suppliers		1200
				31	Bal c/d	2800	26300
		8800	30,000			8800	30,000

Note the following: -

- a) Receipts are on the left hand side and payments are on the right hand side of the cashbook.

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- b) On the left side of the debit and of the credit side is the date for each transaction. The cashbook is on-going and may last for years, so this is very important
- c) The receipts and payments could be by cash or by cheque

### Cash paid into the Bank

From our previous hypothetical example, the payments into the bank have been cheques received by the firm that have been banked immediately. We must now consider cash being paid into the bank.

A. Let us look at the position when a customer pays his account in cash, and later part of this cash is paid into the bank. The receipt of the cash is debited to the cash column on the date received, the credit entry being in the customer's personal account. The cash banked has the following effect needing action as shown.

Effect	Action
1. Asset of cash is decreased	Credit asset account, that is the cash account which is represented by the cash column in the cash book
2. Asset of bank is increased.	Debit the asset account, which is the bank account, which is represented by the bank column in the cashbook.

For example, cash receipt of 10,000 from Kato on 3<sup>rd</sup> June 2004, later followed by the banking on 5<sup>th</sup> June 2004 of 6000 of this amount. This would appear in the cashbook as follows.

### Cashbook

Date	Details	Cash	Bank	Date	Details	Cash	Bank
2004 June 3	Kato Cash	UGX 10,000	UGX	2004 June 5	Bank	UGX 6000	UGX
5			6000				

If the firm requires cash, it may withdraw cash from the bank. This is done by making out a cheque to pay itself certain amount in cash. The bank will give cash in exchange for the cheque over the counter

Here is the two-fold effect and the action required.

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Effect	Action
1. Asset of bank decreased	Credit asset account, i.e. the bank column in the cash book
2. Asset of cash increased.	Debit the asset account, i.e. the cash column in the cashbook.

For example, a firm made a withdraw from the bank on 4th August 2004 of UGX.75000/=. In the cashbook, this transaction would appear as follows.

### CASHBOOK

Date	Details	Cash	Bank	Date	Details	Cash	Bank
2004 August 4	Bank	UGX 75000	UGX	August 4	Cash	UGX	UGX 75000

### Three-Column Cashbook

Where a business entity frequently allows or receives cash discount, it is usually convenient to use a three-column cashbook so as to include all the information relating to cash and bank transactions in a single book. In this Topic emphasis is more on two and three column cashbooks.

#### Example 1

Enter the following transactions into a cashbook - Year 2005 , Month of Oct

Oct. 1. Kibonge started business with cash at bank amounting to UGX 940,000

2. Received a cheque from G.W Kato worth UGX 115000

4. Cash sales 102000

6. Paid rent by cash 3500

7. Banked 50,000 of the cash held by the firm

15. Cash sales paid direct into the bank 40,000

23. Paid by cheque to S. Forks 277000



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29. Withdrew cash from bank for business use 120,000

30. Paid wages in cash 118000

### CASHBOOK

Date	Details	Folio	Cash	Bank	Date	Details	Folio	Cash	Bank
2005			UGX	UGX	2005			UGX	UGX
Oct 1	Capital	GL1		940,000	Oct 6	Rent	GL65	35000	
“ 2	G.W. Kato	SL98		115000	Oct 7	Bank	C	50,000	
“ 4	sales	GL 87	102000		Oct 23	S. Forks	PL23		277000
“ 7	Cash	C		50,000	Oct 29	Cash	C		120,000
“ 15	Sales	GL87		40,000	Oct 30	Wages	GL39	118000	
“ 29	Bank	C	120,000		Oct 30	Balances	C/d	19000	748000
			<u>222000</u>	<u>1145000</u>				<u>222000</u>	
Nov 1	Balances	B/d	19000	748000					1145000

The abbreviations used in the folio column are as follows: -

GL= General Ledger, SL = Sales Ledger, C = Contra, PL = Purchases Ledger

### BANK RECONCILIATION

Bank reconciliation is the process of bringing cashbook and bank statement balances into agreement by adjusting an account balance reported by a bank to reflect transactions that have occurred since the reporting data.

### AGREEMENT OF THE CASH AND BANK BALANCES

When all receipts are deposited intact and all payments are made by check, the bank statement becomes a device for proving the cash in bank account. The proof normally begins with the preparation of a reconciliation of the bank balance. To simplify this process, request the cut-off date of the bank statement to be the last working day

of the month. Thus, if all credits in the bank were also debited to the cashbook and all debits in the bank were credited in the cashbook and vice-versa, the two balances would agree and there would be no need of bank reconciliation. However, this is not always the case. The balance as per bank statement rarely agrees with the balance as per cashbook and thus the need to prepare a bank reconciliation statement.

### **CAUSES OF DISCREPANCY IN BANK BALANCE STATEMENT AND CASHBOOK.**

Numerous things may cause the bank statement balance to differ from the cash balance in the general ledger

i. Outstanding Checks/ Un-presented cheques:

These are checks that have been written and are listed on the cash disbursement journal but have not cleared through the bank. They are drawn and credited in the cashbook but not presented to the bank for payment. These cheques are not debited to the bank statement.

ii. Unrecorded Deposits/ Un-credited cheques (also called Deposits in Transit):

Often deposits are made on the day following the last day of the month; consequently, these deposits do not appear on the bank statement for that month but they appear on the cash receipts journal. Deposited to the bank and debited to the cashbook but not credited by the bank.

iii. Direct debits, Charges for Services and Non-Collectable Items:

A bank often deducts amounts from a depositor's account for services rendered and for returned checks. The bank notifies you of each deduction with a debit memo. These deductions should be recorded as soon as they are received. They are debits in the bank statement not credited to the cashbook and payments effected by the bank without requiring a cheque to be issued by the account holder. Since cheques are not issued for such payments, they are not recorded in the cashbook yet debited in the bank statement. They include the following.

iv. Bank charges,

The bank, for services offered to the account holder, levies these charges; they include ledger fees, commission and many others.

v. Standing orders (SO)

These are arrangements where the account holder instructs the bank to make certain routine and fixed type of payments directly to the payees on behalf of the account holder. The account holder does not issue cheques for these types of payments. Such transactions include; insurance premiums, paying utility organizations such as water bills and telephone charges. Others include paying interest and amortizing fixed instalment loans.

If the deduction occurs close to the end of the month, it may not show on the bank statement.

vi. Direct credits and Interest earned:(credits in the bank statement not debited to the cashbook)

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These are receipts that are directly credited to the bank statement without having been debited to the cashbook. For instance, some debtors may clear their indebtedness by paying directly to the payee's bank account and some accounts earn interest that is posted to the account by the bank at the end of the month making the bank statement the only notification.

vii. Credit advice notes (credit memo) and debit advice notes

A credit advice note (credit memo) and a direct debit note for direct credits and direct debits are sent to the account holder and may not be included in the cashbook.

viii. Clerical errors

Errors made in recording amounts or wrong postings in the cashbook or bank statement make the cashbook and bank statement balances disagree. Regardless of care and systems of internal control, both the bank and the depositor may make errors that affect a bank balance. These errors are not discovered until the balance is reconciled.

ix. Dishonoured cheques

When a bank refuses to pay or recognize a cheque as an instrument for transferring money from one person to another, such a cheque is a dishonoured cheque.

### WHY ARE CHEQUES DISHONoured?

- Lack of sufficient funds on the account
- Amount in words differing from amount in figures
- Drawer's signature differing from specimen signatures held by the bank
- Expired cheques (cheques get stale or expire six months from the date on the cheque).
- Alterations on the cheque not counter signed.
- If there is no account title on the cheque
- Where drawer's confirmation is required by contract and cheques are not confirmed.
- When the payee's identity is doubted
- For some cheques, if payment vouchers are required and are not presented

A Simple illustration:

## ISAAC CHRISTOPHER LUBOGO

Mr. Bukenya runs a current account with Nile Bank. He has received a bank statement showing his transactions with the bank in the month of December 2004 as follows.

M. Bukenya

- Bank statement for the month of Dec. 2004

Date	Particulars	Dr. (UGX)	Cr. (UGX)	Balance (UGX)
1/12/2004	Balance B/f			1,600,000
	Chq. No. 202		8,000,000✓	9,600,000
	Chq. No. 1002	1,000,000✓		8,600,000
	Chq. No. 204		500,000✓	9,100,000
	Chq. No. 1003	2,000,000✓		7,100,000
	Salary deposit		1,700,000	8,800,000
	S.O-MTN (Airtime)	100,000		8,700,000
	Bank charges	200,000		8,500,000

- The following is an extract of his cashbook.

M. Bukenya's Cashbook

Date	Particulars	Debit (UGX)	Date	Particulars	Credit (UGX)
1/12/04	Balance b/f	1,600,000		Chq. No. 1001	500,000
	Chq. No. 201	1,000,000		Chq. No. 1002	1,000,000✓
	Chq. No. 202	8,000,000✓		Chq. No. 1003	2,000,000✓
	Chq. No. 203	4,500,000		Chq. No. 1004	2,500,000
	Chq. No. 204	500,000✓		Bal c/f	9,600,000

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	Total	15,600,000		Total	15,600,000
--	-------	------------	--	-------	------------

Note: Ignore Dates

Required: Reconcile the bank statement and cashbook balances

Solution

Step 1: Check off all the transactions that appear both in the cashbook and bank statement with right amount on the right sides. (See items with the symbol (✓) in the question above).

Step 2: Prepare an adjusted cashbook as follows

### M. Bukenya's adjusted Cashbook

Date	Particulars	Debit (UGX)	Date	Particulars	Credit (UGX)
1/1/05	Balance b/f	9,600,000		D. Dr. S.O-MTN (Airtime)	100,000
	D. Cr. Salary	1,700,000		D. Dr. Bank charges	200,000
				Bal c/f	11,000,000
	Total	15,600,000		Total	15,600,000

Step 3: Prepare a bank reconciliation statement as follows

M. Bukenya's Bank reconciliation statement

Exercise 2

On 30/6/2004, the bank statement of MUBS Guild showed the bank account to have to have a debit balance of UGX 715,400,000. However, on the same date, the cashbook showed the bank account to have an overdraft of UGX 1,195,900,000.

A check of the bank statement against the cashbook revealed the following:

Cheques totalling UGX 3,168,400,000 paid to creditors had not been presented to the bank for payment.

An amount of UGX 150 Millions paid as contribution to assist the Tsunami Victims was recorded as UGX 15 Millions.

Cheques amounting to 2,574,500,000 Shillings banked in the month did not appear on the bank statement.

Bank charges of 13,750,000 Shillings had been recorded in the cashbook as 17,350,000.

## ISAAC CHRISTOPHER LUBOGO

A cheque of 35 Million Shillings for drawing had been recorded as 53 million in the cashbook.

Required:

- a) Adjust MUBS Guild cashbook.
- a) Reconcile the adjusted cashbook balance with the bank balance.
- b) State four major reasons why the cashbook balance most often differs from the bank statement balance as at any date.
- c) There is normally no serious need for preparation of a bank reconciliation statement  
Discuss.

Balance as per adjusted cashbook		11,000,000
Add: Un-presented cheques		
Chq. No. 1001	500,000	
Chq. No. 1004	2,500,000	3,000,000
		14,000,000
Less: Un-credited cheques		
Chq No. 201	1,000,000	
Chq No. 203	4,500,000	(5,500,000)
Balance as per bank statement		8,500,000

## PREPARATION OF FINANCIAL STATEMENTS

### Common financial statements

## ISO PRAY, MY LORD

- Income statement
- Balance statement

Formats

### **Income Statement**

A case of a Service firm

XZY Advocates

Income statement for the year ended .....

	Shs	Shs
<b>INCOME</b>		
Legal fees		xxx
<b>EXPENDITURE</b>		
Office rent	xx	
Salaries	xx	
Depreciation	xx	
Provision for bad debts xx		(xxx)
<b>NET INCOME</b>		<b>XXX</b>

ISAAC CHRISTOPHER LUBOGO

A case of Merchandising company

XZY Ltd.

Income statement for the year ended .....

	Shs	Shs	Shs
-			
Sales			xxx
less sales returns			(xxx)
Net sales			xxx
Less cost of sales			
Opening stock		xx	
add: purchases	xx		
less purchase returns	(xx)		
add transport inwards	xx		
net purchases		xx	
cost of goods available for sale		xx	
less closing stock		(xx)	
cost of sales			(xxx)
gross profit			xxx
Add: other incomes (e.g. interest received)			xxx
			xxx
Less operating expenses			
Office rent		xx	
Salaries	xx		
Utilities		xx	
Depreciation		xx	



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Bad debts	xx	(xxx)
NET PROFIT		XXX

### Balance Sheet

XYZ Ltd

Balance sheet as at .....

	shs	shs	shs
<b>ASSETS</b>			
Fixed assets	cost	accum depr.	NBV
Motor vehicle	xx	xx	xx
Current assets			
Stock			xx
Debtors			xx
Prepaid expenses			xx
Bank Cash			xx
TOTAL ASSETS			XXX
<b>EQUITY AND LIABILITIES</b>			
Equity & reserves			
Ordinary Capital			xx
Retained earnings (net profit)			xx
Owners' equity		xx	
Liabilities			
Noncurrent liabilities			

## ISAAC CHRISTOPHER LUBOGO

5 year loan	xx	
Current liabilities		
Creditor	xx	
Accrued expenses	xx	xxx
<b>TOTAL EQUITY AND LIABILITIES</b>		<b>XXX</b>

### A CASE OF SERVICE FIRMS E.G. LAW FIRMS

#### Illustration 1

MM Advocates had the following trial balance extract for the year ended 31/12/2010

A/C Title	Dr (shs)	Cr (shs)
Ordinary share capital		20,000,000
Motor vehicles	16,000,000	
Computers	8,007,000	
Office equipment	3,250,000	
Furniture	3,800,000	
Debtors	8,230,000	
Creditors		4,200,000
Income		22,450,000
Office rent	1,500,000	
Utilities	500,000	
Salaries	4,877,000	
Fuel	486,000	
<b>Total</b>	<b>46,650,000</b>	<b>46,650,000</b>

Additional Information:

- i. Salaries worth shs. 2,450,000/ remained outstanding at the end for the year.
- ii. Office rent included shs. 250,000/ was meant for the forth coming year.

Required:

- a) Prepare the firm's income statement for the year end.
- b) Prepare the firm's balance sheet for the year end.

Ex. 1

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ABC Advocates had the following trial balance extract for the year ended 31/12/2010

<b>A/C Title</b>	<b>Dr (shs)</b>	<b>Cr (shs)</b>
Motor vehicles	16,000,000	
Computers	8,000,000	
Office equipment	3,250,000	
Furniture	3,807,000	
Debtors	8,230,000	
Creditors		4,200,000
Income		22,450,000
Office rent	1,500,000	
Utilities	500,000	
Salaries	4,877,000	
Ordinary share capital		20,000,000
Fuel	486,000	
<b>Total</b>	<b>46,650,000</b>	<b>46,650,000</b>

Additional Information:

- i. Income worth shs. 4,250,000/ was received in advance
- ii. Fixed assets are to be depreciated at 20% on cost per annum
- iii. Utilities amounting to shs. 800,000/ accrued at the end of the year

Required:

- a) Prepare the firm's income statement for the year end.
- b) Prepare the firm's balance sheet for the year end.

Ex. 2

XYZ Advocates had the following trial balance extract for the year ended 31/12/2010

ISAAC CHRISTOPHER LUBOGO

<b>A/C Title</b>	<b>Dr (shs)</b>	<b>Cr (shs)</b>
Motor vehicles	16,000,000	
Computers	8,000,000	
Office equipment	3,250,000	
Furniture	3,807,000	
Debtors	8,230,000	
Creditors		4,200,000
Income		22,450,000
Office rent	1,500,000	
Utilities	500,000	
Salaries	4,877,000	
Ordinary share capital		20,000,000
Fuel	486,000	
<b>Total</b>	<b>46,650,000</b>	<b>46,650,000</b>

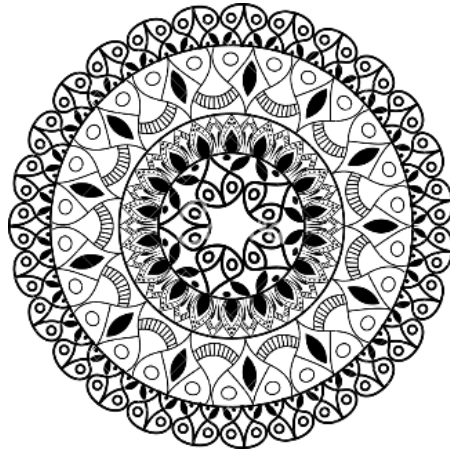
Additional Information:

- i. Income amounting to shs. 2,850,000/ remained outstanding
- ii. Utilities amounting to 1,800,000 accrued at the end of the year

Required:

- a) Prepare the firm's income statement for the year end.
- b) Prepare the firm's balance sheet for the year end.

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# Volume Three

# **TAXATION**

## Background

Taxation, imposition of compulsory levies on individuals or entities or transactions by governments. Taxes are levied in almost every country of the world, primarily to raise revenue for government expenditures, although they serve other purposes as well. There is no quid-pro-quo in tax. No taxation without a law that imposes the tax - Articles 152 (i) of the Uganda Constitution provides that “No tax shall be imposed except under the authority of an Act of Parliament”.

- Compulsory levy
- On individuals or entities
- Put in place by a Government

## CLASSIFICATION OF TAXES

Taxes are classified as either direct or indirect.

Direct Taxes are imposed on income arising from business, employment, property and the burden of the tax is borne by the individual or business entity. Examples of direct taxes include: Corporation tax, Individual Income Tax, e.g. Pay As You Earn, capital gains tax and rental tax.

Indirect Taxes are taxes levied on consumption of goods and services collected by an Agent (Taxpayer). Notable indirect taxes include Value Added Taxes (VAT), excise duty, import duty

## KEY TERMS

- Sec. 2 (yy), ITA - A Person includes an individual, a partnership, a trust, a company, a retirement fund, a government, a political subdivision of government, and a listed institution.
- Sec. 15, ITA - Chargeable Income is the gross income of a person for the year less total deductions allowed for the year.  $CI = GI - \text{Allowable Deductions}$
- Gross Income (under Sec. 17) of a person for a year of income is the total amount of business income, employment income and property income other than exempt income. In case of resident persons, Gross income is a person's income from all geographical sources; and in the case of non-resident persons, gross income includes only the income derived from sources in Uganda.

## Residence

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Sec 9 - A resident individual is a person who has a permanent home in Uganda; or is present in Uganda: for a period of 183 days or more in any twelve (12) months period that commences or ends during the year of income; or during the year of income and in each of the two preceding years of income, for periods averaging 122 days in each such year of income; or is an employee or official of the Government of Uganda posted abroad during the year of income.

Illustration for Sec 9 (1)(b)(ii):

Year 1 (2018) – 122 days

Year 2 (2019) – 122 days

Year 3 (2020) – 122 days (YOI)

Resident Company

Sec. 10 - A resident company is one which:

- Is incorporated in Uganda under the laws of Uganda
- Is managed or controlled in Uganda at any time during the year of income.
- Undertakes a majority of its operations in

Uganda during the year of income.

Resident Partnership

Sec. 12 - A resident partnership is one where any of the partners was a resident person in Uganda during the year of income.

Year of income – sec 2 (zzz).

Year of Income means the period of twelve months ending on 30th June, and includes a substituted year of income and a transitional year of income.

Sec. 39 - A substituted year of income is a period of 12 months ending on a date other than June 30.

Sec 39 (4) - A transitional year of income is a period of less than 12 months that falls between the person's previous accounting date and a new accounting date. This is as a result of a change in a person's accounting year / date.

Year of Income –Illustrated

- YOI 1 – 1 July 2018 - 30 June 2019
- YOI 2= 1 July 2019 - 30 June 2020

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- TYOI=1st July 2020-31st Dec 2020
- 3: SYOI =1st Jan 2021 – 31 Dec 2021
- 4: SYOI = 1st Jan 2022-31 Dec 2022
- 5: SYOI = 1st Jan 2023-31 Dec 2023

### Scope of income tax

- A person is taxed in Uganda based on Tax Residence; Resident persons or Non –Resident persons.
- Income tax is imposed on Chargeable Income – which is Gross Income (from business, employment and property) less Deductions.
- For a resident person, income tax is charged on gross income from all over the world; A non- resident is only charged on income derived from sources within Uganda.

### Chargeable income

Chargeable Income is under 15 and applies to a person and a year of income

### Formula:

Gross Income- Allowable Deductions

(Gross income minus total allowable deductions).

Thereafter, the rate of Tax is applied on the Chargeable Income – For example an Individual Person Rates under Section 6 (1) and Part 1 of Third Schedule.

## INCOME FROM EMPLOYMENT

Section 4 of Income Tax Act of 1997, imposes a charge to (Income) Tax on every person for each year of income, who has chargeable income. Chargeable income is defined in Section 15 to be gross income of a person for the year less deductions allowed under the Act. Section 17(1)(b) defines the gross income to include employment income (among other sources of income). Section 17(2) considers the definition of taxable income in relation to the residential status of a person:

- a) For resident employees, they would be assessed to tax on all other worldwide income (Section 17(2)(a). Section 17(2)(b);
- b) For non-resident employees, it is only income derived from sources in Uganda that will be subject to tax in Uganda.



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The residents will however be given a credit for tax paid on income earned from sources outside Uganda.

Section 19 of Income Tax Act which is now to be studied in detail, amplifies section 18(1)(b) and defines the types of payments, advantages, benefits or facilities which constitute employment income and also excludes certain payments and benefits from employment income. In order to establish whether income derived by a person is employment income, it is necessary to determine whether the persons' activities amount to employment.

Employment presupposes the existence of two parties – the employee and employer and these are defined in Section 2 of the Act. 'Employee' is defined to mean 'an individual engaged in employment; while 'Employer' is defined to mean a person who employs or remunerates an employee. The definition of a 'person' in the Act (to include an individual, a partnership, a trust, a company, a retirement fund, a government, a political subdivision of a government, and a listed institution) is broad enough to cover an individual or entity who employs or remunerates an individual engaged in employment as an employee for the purpose of the Act. Section 2 of the Act defines 'employment' to mean;

- a) The position of an individual in the employment of another person; or
- b) A directorship of a company; or
- c) A position entailing the holder to a fixed or ascertainable remuneration; or
- d) The holding or acting in any public office

Employment is ordinarily regarded to exist where there is a legal relationship of master and servant. An employee will be under a contract of service, whether written, verbal or implied. In the case of *Fall V. Hitchen* 49 TC 433, judicial opinion was expressed that the expression "contract of service" is more or less an equivalent of the term 'employment'.

All factors governing a relationship of persons involved in a contract of service must be considered to establish whether a person is performing his duties as an employee (i.e. engaged in a "contract of service") or as a person on business in his own account, or an independent contractor (i.e. engaged in a 'contract of services').

The employment relationship does not therefore exist where the individual is engaged on his or her own account as an independent contractor. The determination of whether an individual is an employee or independent contractor will for example involve considering whether the hirer has the legal right to control the manner in which the work is performed and the degree of integration of the activities of the persons hired within Mr. Bacon J expressed the view that "this particular transaction falls also within the word

'Employment' standing alone". Section 19 defines 'employment income' for the purpose of the Act. It is relevant particularly to Section 17(1)(b) which as noted above, includes employment income in gross income and it also relevant to Section 116 which considers the withholding of tax by employers (under PAYE scheme).

The introductory phrase of sub-section 19(1) states the general principle that the employment income of an employee for a year of income is the income derived by the person from any employment exercised by the

## ISAAC CHRISTOPHER LUBOGO

person during that year. In other words, this section only applies where an employment relationship (as defined by the Act) subsists.

Section 19(1) enumerates the type of payments and benefits which are to be included in employment income for the purposes of Section 17(1)(b). The critical point is the amounts specified are included in employment income regardless of whether they are revenue or capital in nature.

Paragraph (a) lists essentially two categories of payment to be included in the employment income of an employee for a year of income, these are;

- i) Payments which represent the ordinary income from payment, and the income is enumerated to include any wages, salary, leave pay, payment in lieu of leave, overtime pay, fees, commission, gratuity and bonus. It should be noted that gratuity is, like all other payments, chargeable in the year of receipt and should not to be spread backwards.
- ii) Allowances: the Act details the income to be the amount of any travelling, entertainment, utilities, cost of living, housing, medical or other allowance. An 'allowance' is an amount paid to an employee for use by the employee in meeting particular expense but with no requirement for the employer to vouch that the amount has been expended for the stated purposes. If, however, the employer can prove to the satisfaction of the Commissioner General that part of an allowance has actually been expended in performing duties of employment, then such part will be excluded from employment income. This exclusion will not apply to allowances for private expenditures as cost of living, utilities or housing allowance. It should be noted that the payments enumerated in paragraph (a) comprise more or less an exhaustive list of payments which are a normal product or incident of employment and in the majority of cases no difficulty will arise in identifying these types of payments. However, the Assessing Officer must continually be on guard to ensure that, although a payment may be labelled as something outside the list it does not in fact fall within paragraph (a).
- iii) Paragraph (b) widens the scope of chargeability beyond monetary payments to the employee to include the value of any benefit, advantage, or facility granted to the employee during the year of income. Section 19(2) excludes some benefits from employment income and these will be considered in detail later on.

Sub-section (3) provides for the quantification or valuation of any benefit advantage or facility, included in employment income following the rules laid down in the Fifth Schedule of the Act. A point of interest in regard to charging the tax benefits received in kind by an employee is the established Taxation Practice of the Principle of money's worth.

The principle is that any benefit in kind received by an employee can be included in employment income if it can be converted into cash/money. A leading UK Tax case on this principle is *Tennant V. Smith (1892) 3TC 158*. The facts of the case were that a bank required its agent to live at the 'Bank house' which included appropriate residential accommodation. He occupied the house as a custodian of the whole premises (bank and house) paying no rent and with no power to sub-let the house. It was held that the value of the house was not

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part of the (employment) income of the taxpayer as the benefit was not money or money's worth. With a few exceptions, the principles of money's worth underlined the taxing of benefits received in kind by the employee under the repealed Income Tax Decree 1974. However, in the Income Tax Act of 1997, section 56 reverses this principle which is based on the notion that nonconvertible benefit is income of no value. Consequently, all benefits except those specifically excluded by sub-section (2) are included in employment income.

We can now consider the valuation of benefits income detail following the Fifth schedule and circular instruction No. 3 of 1998 issued by CIR.

Paragraph (2) of the fifth schedule provides that a benefit will be included in income from employment is considered to be a benefit if it is.

- a) provided by an employer and third party (including an associate of the employer) under agreement with the employer or associate of the employer; and
- b) provided to an employee or to an associate of an employee; and
- c) provided in respect of past, present or prospective employment

These rules are essentially a re-statement of section 19(6) to ensure that all benefits received directly or indirectly by virtue of an employee holding the office of employment are brought into the tax net.

The specific benefits considered are:-

- i) Private use of motor vehicle (para. 3 of 5th Schedule).

The employee will derive a taxable benefit if the employer provides the employee with the use, or availability to use of a motor vehicle wholly or partly for the private purposes of the employee. The formula for determining the value of benefit derived from use of the motor vehicle is:-

$(20\% \times A \times B/C) - D$ .

Where A = Market value of the motor vehicle at the time it was first provided for the private use of the employee and if the vehicle was previously used for more than one year, it is depreciated at 35% straight line basis.

Where B = Number of days in the year of income during which the motor vehicle was used or available for use for private purposes by the employee for all or part of the day.

Where C = Number of days in the year of income

Where D = Any payment made by the employee for the benefit.

- ii) Provision of a House Keeper, Chauffeur, Gardener, or Other Domestic Assistant (para 4)

The value of the benefit will be the total remuneration (employment income) paid to the domestic assistant in respect of services rendered to the employee less any payment made for the benefit by the employee.

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1M per month; You contribute 300,000 per month: Your benefit will be  $1,000,000 - 300,000 = 700,000$

### iii) Meal, Refreshment, or Entertainment (Para 5)

The taxable value of the benefit is the cost of providing the meal, refreshment or entertainment less any contribution/payment made by the employee for the benefit. Section 19(2) (e), however, spells out specific circumstances under which this benefit may be tax exempt.

### iv) Provision of utilities (para 6)

The taxable value of the benefit is the cost of providing the utilities less any payment made by the employee for the utilities.

### v) Low interest loans (para 7)

Any employee will derive a taxable benefit known as “loan benefit in kind” if he/she is provided with a loan or loans whose (total) amount exceeds one million shillings and with no interest or at an interest rate below the statutory rate. Para 13 defines the statutory rate in relation to a year of income to mean the Bank of Uganda discount rate at the commencement of the year of income (i.e. 1st July). The value of the benefit is the difference between the interest that would have been paid on the loan if the interest rate was the statutory rate and the interest actually paid on the loan (if any) during the year of income.

6% interest p.a

Market rate of interest is 14% p.a

Your benefit will be  $14\% - 6\% = 8\%$  as your benefit

### vi) Waiver of Obligation to pay or repay any amount (Para 8).

The amount waived by the employer or any other person and was due to be paid is the taxable benefit. 2m; the obligation is waived; then you got a benefit of 2m which is taxable.

### vii) Transfer or use of property or provision service (Para 9)

The taxable benefit is the market value of the property or services reduced by any payment made by the employee for the service.

### viii) Housing or Accommodation (Para 10)

An employee receives a taxable benefit if, the employer provides him with accommodation or housing. The value of the benefit is the lesser of:

a) the market rent of the accommodation or housing reduced by any payment made by the employee for the benefit or

Market rent: 2m per month

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Employee pays 500,000 per month

Benefit is:  $2,000,000 - 500,000 = 1,500,000$

b) 15% of employment income (paid by the employer to the employee), including the value of accommodation or housing determined in (a) above.

You must first calculate the entire employment income for the employee. Then get 15% of the entire employment income and compare it with the 1,500,000 above.

ix) Any other benefit (Para 11 of the 5th Schedule).

The quantification of any other benefit not covered by the other clause of the Fifth Schedule is based on the market value of the benefit and reduced by any payment made by the employee for the benefit. This provision does not however apply to any benefit expressly covered by other provisions of Section 19(1) with the exception of Section 19(1)(b).

Paragraph (c) includes in the employment income of an employee for a year of income the amount of any discharge or re-imbursment by an employer of an expenditure incurred by an employee. A 're-imbursment' differs from an 'allowance' in that the amount of the expenditure must be vouched by the employee and the amount paid to the employee is the exact amount of the expenditure incurred by the employee. The most notable example is say when an employer refunds expenditure incurred by the employee on utilities for private consumption. The re-imbursment or discharge of the expenditure incurred by an employee on behalf of his employer which serves the proper business purposes of the employer is excluded from the employee's employment benefit.

Paragraph (d) includes in the employment income of an employee the following payments:

- i) Any amount derived as compensation for the termination of any contract of employment regardless of whether or not provision has been made in the employee's contract for the payment of such compensation.
- ii) Any amount derived in commutation of amounts due under any contract of employment.

These payments are subject to section 19(4) which reduces the amount of the pertinent payment included in the employment income of the employee to 75% of the amount paid by the employer, where the employee has been in the employment of the employer making the payment for ten years or more. The difference between the amount paid and the amount included in employment income i.e. 25% of the amount paid is treated as tax exempt income under section 19(7).

Paragraph (e) brings to charge any payment paid by a tax-exempt employer as a premium for insurance on the life of an employee where the insurance is for the benefit of the employee or any of his or her dependants. A "tax exempt employer" is defined in section 2 to mean 'an employer whose income is exempt from tax'. The most prominent examples of a tax-exempt employer is the Central Government (of Uganda and the local authorities.

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Note that for other employers, such premiums (on the life of the employee etc) are effectively charged to tax to the employer as the employer is not granted a deduction for the amount of premium paid (section 22 (2)(i)). Because this tax treatment has no effect where the premium is paid by a tax exempt employer, it is only prudent that the premium in this case is included in the employment income of the employee.

Paragraph (g) applies where shares are issued to an employee under ‘employee share acquisition scheme’ during the year of income. Where this occurs, the difference between the market value of the share at the date of issue and any consideration given by the employee for the shares (including any consideration given for the grant of a right or option to acquire the shares) is included in the employment income of the employee for the year.

Paragraph (h) applies where an employee who has been granted a right or option to acquire the shares under an employee share acquisition scheme disposes of the right during the year of income. Where this occurs, the gain derived by the employee on disposal (as determined under Part VI (Section 49-54) of the Act, dealing with gains and losses on disposal of assets) is included in the employment income of the employee for that year. Section 19(2) provides for certain amounts that are to be excluded from employment income, and such sums are tax exempt income for the employee (section 19(7)). The Act deems these amounts to be exempt to ensure that they are not included in the gross income of the employee under residual income rule in section 20(1)(d). Sub-section (2)(a) excludes the cost of passage to and from Uganda incurred by the employer in respect of the appointment and termination of employment of certain employees recruited outside Uganda. The exemption relates to expenditure on passages between Uganda and any place outside Uganda and applies to an employee who:-

- i) Was recruited or engaged outside Uganda.
- ii) Is in Uganda solely for the purposes of serving the employer; and
- iii) Is not a citizen of Uganda.

Sub-section (2)(b) excludes the re-imbusement or discharge of an employee’s medical expenses. Section 19(8) defines ‘medical expenses’ to include ‘a premium or other amount paid for medical insurance’. The limitation available of this exclusion to employees who are directors of the employer company is set out in section 19(5).

Sub-section (2)(c) provides a similar rule in relation to life insurance premiums paid by an employer for the benefit of an employee or his/her dependants that are taxed to the employer through the denial of a deduction for the premium under section 22(2)(j). Note that the exclusion in the sub-section does not cover the provision detailed in section 19(1)(1)(e).

Sub-section (2)(d) provides for the exclusion of an allowance for, or re-imbusement or discharge of expenditure incurred by an employee on accommodation and travel expenses, and on meals and refreshment while travelling in the course of performing duties of employment. In case of an allowance it is expressly provided that the amount to be excluded from employment income should not exceed the cost actually or likely to be incurred on accommodation, meals, etc. It is accordingly within the discretion of the assessing officer to reject a claim for

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exclusion of any allowance if he or she feels that it excludes a reasonable amount that one would need to spend on meals accommodation, etc.

Sub-section (2)(e) excludes the value of any meal or refreshment provided by an employer to an employee in say a canteen, cafeteria or dining room operated by, or on behalf of the employer solely for the benefit of employees on equal terms i.e. without any discrimination. In practice this, implies that a uniform canteen, cafeteria etc would be operated for all employees in the organisation without distinction based on grade seniority or any other basis. It should also be noted that there is a limitation of availability of this exclusion to employees who are directors of the employer company as set out in Section 19(5).

Sub-section (2)(f) provides for the exclusion from employment income of minor benefit. This is to be determined on a monthly basis by reference to a monetary amount. The provision is that any benefit received by an employee from an employer whose value is less than shs10,000/= will not be a taxable benefit.

NABIMANYA JULIUS:

Employed as an ICT Manager by MTN Uganda Ltd. He receives the following payments:

Salary 5,000,000 per month

Motor vehicle worth 100,000,000 and he pays 4m per year for the use of the motor vehicle

Travel allowance of 10,000,000

School fee for his children worth 30m per year

Medical allowance of 5,000,000 per year

He fell sick and was admitted in Nairobi and paid 20m which was reimbursed by MTN

What is his PAYE:

NABIMANYA JULIUS'S CHARGEABLE INCOME FOR THE PERIOD ENDING

31 DEC 2020

ITEM	SECTION	AMOUNT
Salary 60,000,000	19(1)(a)	5,000,000 x12 =
Motor Vehicle	19(1)(b) Para 3 of 5th Sch	16,000,000
Travel Allowance	19(1)(a)	10,000,000
School Fees	19(1)(b) para 11 of 5th Sch	30,000,000

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Medical allowance	19(1)(a)	5,000,000
Medical reimbursement	19(20)(b) Not added	20,000,000

Total Chargeable Income is 121,000,000

Motor Vehicle

$(20\% \times A \times B/C) - D$

$(20\% \times 100,000,000 \times 365/365) - D$

$(20,000,000 \times 365/365) - D$

$20,000,000 - 4,000,000 = 16,000,000$

Tax Payable:

Chargeable income of 121,000,000.

Tax payable S.6 Part 1 of 3rd schedule

$2,820,000 - 0$

$(4,020,000 - 2,820,000) \times 10\% = 120,000$

$(4,920,000 - 4,020,000) \times 20\% = 180,000$

$(120,000,000 - 4,920,000) \times 30\% = 34,524,000$

$(121,000,000 - 120,000,000) \times 40\% = 400,000$

TOTAL 35,224,000

### RENTAL INCOME

Rent is defined to mean 'any payment, including a premium or like amount, made as consideration for use or occupation of or the right to use or occupy, land or buildings'.

Rental income derived by a resident person (other than resident individual) from the lease of property either in or outside Uganda, and rental income derived by a resident individual from the lease of property outside Uganda is included in gross income either as property income under section 20(1)(a) or as business income. Under Section 18(1)(g) and is fully taxable.

Rental income is taxed under section 5 of the Income Tax Act and is not part of the gross/chargeable income on which tax is imposed under section 4. It is therefore not part of property income.



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It is important to note that Section 5 formally imposes a separate tax referred to as the 'rental tax' on the rental income derived by a resident individual for a year of income.

Rental income derived from the lease of any other property such as lease of chattels is not included in income chargeable to rental tax nor is rental income from immovable property derived from foreign sources i.e. outside Uganda. Such other income is taxed as property income under the Income Tax Act.

Section 5(2) provides for the computation of rental tax payable for a year of income by a resident individual. It is calculated by applying the rate of tax determined under Section 6(2) and prescribed in Part VI of the Third schedule. The rate of tax is 20% of the chargeable income in excess of 2,820,000/- which is the threshold.

No deductions are allowed under the Act for expenditures or losses incurred by the individual in deriving rental income subject to tax except as provided for under Section 22(1)(c) which allows a 20% on gross allowable deduction and Section 22(1) (ca) which allows an interest on a mortgage from a financial institution as an allowable deduction as well. Therefore, there are only two allowable deductions when it comes to rental tax as stated herein.

Paragraph (c) provides that the tax payable as rental tax under Subsection 5 is not to be reduced by any tax credits allowed to the individual under the Act. It can be deducted from the foregoing that rental tax under section 5 is final tax.

### COMPUTATION OF TAX

Features associated with the computation of individual rental income tax.

All rents earned during the year are put together. The rental tax regime in Uganda has undergone numerous changes through amendments in the Income Tax Act. These changes are intended to find an acceptable rental tax regime that will increase the revenue collections from the sector as well as eliminate the unfairness caused to individual taxpayers to benefit companies.

Prior to the 2020 and 2021 amendments, individuals earning rental income were allowed a threshold, 20% of expenses incurred in generation of rental income and thereafter apply 20% rate to the chargeable income while companies were allowed all their expenses and 30% to the remaining chargeable income. This led to increased tax planning and revenue leakages as individuals structured their rental tax affairs through companies.

In the 2021 amendments, companies were allowed all expenses incurred in generation of rental income, while individuals were allowed only 75% of the expenses upon verification by URA. This approach was burdensome to both the taxpayer and URA.

However, the 2022 amendments to the rental tax regime have attempted to further simplify administration and collection of rental tax. The amendments re-introduce a threshold of UGX 2,820,000 and above to which a 12% flat rate is applied on the gross rental income per year for individuals.

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An individual earning gross rental income of Shs 2,820,000 and below per year will pay nil tax, while those earning above the threshold will pay 12% on the difference between their total gross rental income and the threshold.

For example; if an individual earns a gross rental income of Shs 10,000,000 in a year, the rental tax payable will be calculated as follows: ( Shs 10,000,000 less Shs 2,820,000(threshold)) x 12%. Shs 7,180,000 x 12% = Shs 861,600. This tax is payable in four quarterly instalments that is; every three months.

This amended individual rental tax regime simplifies compliance because payments can even be made monthly via mobile money.

For instance, in the illustration above, the taxpayer has to divide UGX7,180,000/= into twelve instalments and apply 12% which would translate into monthly rental tax of UGX71,800/=. This tax can be paid monthly using mobile money platforms thus eliminating the expense of engaging tax agents to file and pay rental tax.

The companies that have no threshold under the new rental tax regime but are allowed only 50% of the expenses after which, they apply 30% on the remaining chargeable income giving them an effective tax rate of 15%.

The new rental tax regime therefore eliminates the burden of individuals keeping all records of expenses incurred in generating rental income and it imposes an effective tax rate of 12% for individuals which is lower than the 15% effective rate for companies.

## BUSINESS INCOME

The income tax act defines business income to mean any profession, vocation or adventure in the nature of trade, but does not include employment income. expenses that were incurred in the generation of income for the business are allowed as deductions for the business. In order to determine the chargeable income, you need to know the amount of receipts and the costs and expenditures incurred to earn the receipts. To arrive at the chargeable income, you get the gross income and less allowable deductions.

Section 22(1) of the ITA provides that for expenditures or losses to be allowed as a deduction for tax purposes relevant during a year of income will depend on the extent to which the expenditures or losses were incurred in the production of incomer included in the gross income.

Expenditures that are domestic in nature are not allowed as deductions. Section 22(2) of the Income Tax Act specifically spells out items that are not allowed as deductions. In the event that an individual deducts any of those items under Section22(2) ITA, they are added back to the profit before income tax so that they are taxed.

Other than section 22(2) of the ITA, there are other expenses that are not allowed to be deducted as expenses and the sections are spread out throughout the Act. Below is a simplified template that clearly directs on which

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items are allowed as deductions and those that are specifically disallowed as deductions. You are encouraged to read your Income Tax Acts alongside this template in order to understand the concepts in detail.

### A TAX COMPUTATION TEMPLATE

Item	Section	Shs.
Profit before income tax (PBIT)		xxx
Add: Disallowables		
1 Depreciation	22(2)b	xx
2 Burial expenses	22(2)a	xx
3 Subscription	22(2)a	xx
4 Interest on director's debit balances	22(2)a	xx
5 Entertainment expenses	23	xx
6 Expenses on meals and refreshments	23	xx
7 Loss on sale of fixed assets	22(2)b	xx
8 Loss on other capital items	22(2)b	xx
9 Expenditure on increase in share capital	22(2)b	xx
10 Expenditure on insurance	22(2)c	xx
11 Expenditure on contract	22(2)c	xx
12 Expenditure on indemnity	22(2)c	xx
13 Income tax payable (paid)	22(2)d	xx
14 Dividends paid	22(2)d	xx
15 Income carried to a reserve fund	22(2)e	xx
16 Capitalised income	22(2)e	xx
17 Gifts	22(2)f	xx
18 Fines and penalties	22(2)h	xx

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19 Retirement fund contribution by the Employee	22(2)i		XX
20 Premium on life insurance	22(2)j	XX	
21 Pension	22(2)k		XX
22 Expenditure on alimony or allowance	22(2)l		XX
23 Foreign currency debt gains	48(2)	XX	
24 Gain on disposal of an asset	49	XX	
25 Unrealized Exchange losses	48(3)	XX	
26 Donations (Not in 34)			XX
27 Expenditure on education (Not in 33)			XX
28 Provision for bad debts	24		XX
29 Interest from a foreign controlled resident non-financial institution	89E (1)		XX
30 Decommissioning expenditure by a contractor	89E (3)		XX
31 Contract expenditures from petroleum operations	89F		XX
32 Finance cost of Treasury Bills	122e		XX
33 Finance cost of Government Bonds	122e	XX	
Balancing Charge	27(5) xx		XXX
Adjusted profits			XXXX
Less: Allowables			
1 Wear & Tear	27	XX	
2 Initial Allowance	28(1)		XX
3 Industrial Building Allowance	28(4)		XX
4 Industrial Building deduction	29(1)		XX
5 Start-up cost	30	XX	
6 Expense in acquiring an intangible asset	31(1)		XX

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7 Disposal of an intangible asset	31(2)	XX
8 Expenditure on scientific research	32	XX
9 Expenditure on training(education)	33	XX
10 Charitable donations	34	XX
11 Expenditure on farming	35	XX
12 Expenditures on mineral exploitation	36	XX
13 Apportionment of deductions	37	XX
14 Carry forward losses (Assessed loss b/f)	38(1)	XX
15 Disposal of trading stock	46(1)	XX
16 Foreign currency debt loss (Realized Exchange loss)	48(3)	XX
17 Loss on disposal of an asset	49	XX
18 Exclusion of Doctrine mutuality	60(3)	XX
19 Partnership loss for a resident partner on the partner's share	67(3)	XX
20 Partnership loss for a non-resident partner on the partner's share	67(4)	XX
21 Expenditure or loss by a Trustee beneficiary	72(5)	XX
22 Expenditure or loss by beneficiary of a deceased person's estate	73(2)	XX
23 Limitation on Deduction in relation to petroleum operations	89C(1)	XX
24 Decommissioning costs & expenditures in respect of petroleum	89E(1)	XX
25 20% of rental income expenditures and losses	22(1)c	XX

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26 Local service tax	22(1)d	xx
27 Interest on debt obligation	25(1)	xx
28 Gains and losses on disposal of assets	22(1)b	xx
29 Interest income from Treasury Bills	122a,c,d	xx
30 Interest income from Government Bonds	122a,c,d	xx
Balancing Allowance	27(7)	xx (xxx)
Chargeable Income(C.I)		xxxx

Tax payable/claimable 30% of C.I

Worked out Example

Banya Uganda Ltd.

The following Income statement(Profit and loss account)relates to the operations of Banya Uganda Ltd for the year ending30th June,2018.

Item	Shs
Revenue	640,000,000
Consultancy income	40,000,000
Total sales	680,000,000
Operating expenses	
Salaries	182,000,000
Entertainment	12,000,000
Penalty	8,000,000
Professional fees	120,000,000
Transport	5,000,000
Depreciation	28,400,000
General expenses	7,500,000
Telephone	15,000,000

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Rent and rates	140,000,000
Bad debts	24,000,000
(541,900,000)	
PBIT	138,100,000

### Additional information:

- i) The penalty was made to government for non-compliance. KCCA laws on parking.
- ii) 65% of the professional fees paid includes money used to purchase a motor vehicle used in the distribution of goods.
- iii) The General expenses include burial expense 1,500,000, legal cost to increase share capital 4,000,000 and 2,000,000 being donation to rotary club of Lugogo mango tree.
- iv) The company paid a short-term premium lease of Shs.1,000,000
- v) The company paid annual subscription of Shs.2,000,000 to KACITA
- vi) The Wear and Tear deductions under section 27 was Shs.36,000,000
- vii) The employee's meals and refreshments for domestic purposes of Shs.7,000,000 were not included in the employee's income for the year
- viii)

Bad debts include 14,000,000 of bad debts written off and 10,000,000 for

General provision for bad debts Banya took all reasonable steps to recover

The bad debt written off but failed

### Required:

Determine the chargeable income and tax liability for the year ended 30th June 2018.

### Solution

Item Section Amount

PBIT	138,100,000
Add; Disallowables	
Depreciation	28,400,000

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Entertainment	12,000,000
Penalty	8,000,000
Professional fees $65/100 \times 120,000,000$	78,000,000
Burial expenses	1,500,000
Legal cost	4,000,000
Provision for bad debts	10,000,000
Premium lease	1,000,000
281,000,000	
Less; Allowables	
KACITA	(2,000,000)
WTA	(36,000,000)
(38,000,000)	
Chargeable Income	244,000,000
Tax payable = $30/100 \times 244,000,000 =$	73,200,000/-

## LAWS APPLICABLE TO TAX

### DISPUTES

- Tax Procedures Code Act, 2014 – Sec. 24, 25, 26.
- Tax Appeals Tribunal Act, Cap. 345 (as amended by TAT (Amendment) Acts, 2018, 2021, 2022).
- TAT (Procedure) Rules, S.I 50 of 2012.
- TAT can use Rules of Practice and Procedure of any Court (like CPR) – subject to modifications (S. 22 (3), TAT Act).
- TAT applies, Judicature (Mediation) Rules, 2013 – with necessary modification.
- Laws applicable to Appeals in HC, COA or SC.

Genesis of Tax Disputes



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- Tax Disputes originate from contentious Tax Decisions of URA.
- Tax Decision, under Sec. 3, Tax Procedures Code Act (TPCA), means Tax Assessment or specified decisions therein.
- The Different Tax Assessments are:
- Self – Assessment – Sec. 20, TPCA
- Default Assessment – Sec. 21, TPCA
- Advance Assessment – Sec. 22, TPCA
- Additional Assessment – Sec. 23, TPCA

### Self Assessments – S. 20, TPCA

- Arises where tax payer submits Self – Assessment Return (SARs).
- SARs treated as tax payer’s self – assessment of tax payable.
- Examples of SARs include a Return of income; Return of rental income; etc.
- Return of Income to be submitted not later than 6 months after end of year – S.92A, ITA.
- Provisional Returns to be submitted before last day of 6th month for companies or before end of 3rd month for Individuals – S. 111, ITA.

### Default Assessments – S. 21, TPCA

- Arises where tax payer fails to submit Self – Assessment Return (SAR).
- Default Assessment is made by Commissioner, at any time, and served as assessment of taxes to tax payer.

### Advance Assessment – S. 22, TPCA

- Arises in cases of risk that tax payer may delay, obstruct, prevent... collection of taxes not yet due.
- Advance Assessment is made by CG, URA.
- Commonly applies to where;
- tax payer has died;
- become bankrupt or wound up;
- about to leave Uganda permanently or other appropriate cases.

### Additional Assessment – S.

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### 23, TPCA

- Arises where URA amends earlier

Assessments – by assessing additional taxes.

- It's made:
- At any time, in cases of fraud or gross (or wilful) neglect or discovery of new information.
- In any other cases, made within 3 years from earlier assessment.
- Tax payer may also amend own self – assessment return within 3 years.

Objection to Tax Decision – S.

### 24, TPCA

- Tax payer dissatisfied with Tax Decision to lodge Objection – within 45 days of receipt of decision.
- Tax payer, for good grounds, may apply for extension of time and if satisfied, Commissioner will grant the extension of time.
- Burden of proof on tax payer that:
- Assessment is incorrect or
- decision should not have been made or
- should have been made, differently – S. 26, TPCA.

Objection to Tax Decision – S.

### 24, TPCA

- Thereafter, URA makes Objection Decision – affirming or reducing or increasing or varying the assessment or decision.
- The Object Decision to be served on tax payer within 90 days from date of Objection.
- Where no Objection Decision is made within the time, tax payer may elect (in writing) to treat Commissioner has having allowed the Objection – Sec. 24 (7), TPC Act.

Alternative Dispute

Resolution – S. 24 (11), TPCA

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- Tax payer dissatisfied with the Objection Decision may apply to Commissioner to resolve the dispute using Alternative Dispute Resolution Procedures.

- Minister is yet to make Regulations for

Alternative Dispute Resolution

Procedures for tax purposes – as required by Section 24 (12), TPCA.

- S. 25 (1), TPCA, TAT Act.

- Tax payer dissatisfied with Objection Decision to apply for review with Tax Appeals Tribunal (TAT) – within 30 days of being served decision.

- Or dissatisfied with a (taxation) decision – defined under Sec. 1, TAT Act – apply to TAT under S. 14, TAT Act.

- All Tax disputes shall first be presented to the Tax Tribunal and only proceed to the High Court by way of Appeal (Rabbo Enterprises Case Supreme Court CA 12 of 2004).

- S. 25 (1), TPCA, TAT Act.

- Requirement for deposit of 30% of tax assessed or tax not in dispute, whichever is greater - S. 15, TATA)

- Uganda Projects Implementation and Management Centre (UPIMAC) Case Supreme Court No. 2 of 2009 – that 30% requirement is NOT Unconstitutional.

- Fuelex Case Constitutional ref. No. 3 of 2009 – 30% should apply to disputes from amounts of tax assessed and NOT to disputes that are purely of a legal or technical nature.

- Interest on unpaid taxes ceases to accrue, on filing TAT Application – Airtel Case CACA 40 of 2013.

- S. 25 (1), TPCA, TAT Act.

- The Composition of Tribunal by Chairperson and Members of the Tribunal.

- Tribunal should have Eight (8) Members (exclusive of Chairperson), with at least 40% as women (Sec. 2, as amended in 2022).

- Currently, Tribunal has 4 Members, exclusive of Chairperson.

- Coram of Tribunal for hearings or proceedings is Three(3) Members, with Chairperson or other that presides.

- S. 25 (1), TPCA, TAT Act.

- Applicant (Tax Payer) makes Application made using prescribed form; statement of facts and Reasons.

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- Respondent (URA) lodges Statement of Reasons for the Decision and other docs, within 30 days of being served Application.
- Mediation option available prior to TAT hearing before Registrar or a Mediator – Sec. 17A, TAT Act.
- S. 25 (1), TPCA, TAT Act.
- Burden of proof on tax payer to prove to TAT that assessment is excessive or decision should not have been made or should have been made, differently.
- Hearings and Procedures, within discretion of TAT.
- Powers of Tribunal – to make orders as to costs, damages, interest or other remedy (S. 21 – as amended).
- S. 25 (1), TPCA, TAT Act.
- TAT, in its review of decision, exercises all the powers and discretions conferred on decision maker.
- TAT makes its decision in writing and may:
- Affirm the decision under review
- Vary the decision under review or
- Set aside the decision - and either substitute it with new one or remit the matter to URA for reconsideration.

Appeals to High Court – S. 25 (2), TPCA, S. 27, TAT Act.

- Appeal of TAT Decision by aggrieved party to High Court – within 30 days after decision.
- The Appeal is made on questions of law only.
- Appeal, by way of lodging a Notice of Appeal, stating the question (s) of law to be raised on appeal.
- High Court shall hear and determine the appeal and make orders including:
- Affirming or setting aside the decision of the Tribunal or
- An order remitting the case to the Tribunal for reconsideration.

Appeals to Court Of Appeal – S. 27A, TAT Act.

- Appeal of High Court Decision by aggrieved party to Court of Appeal – within 30 days after decision.
- The Appeal is made on questions of law only.
- Appeal, by way of lodging a Notice of Appeal, stating the question (s) of law to be raised on appeal.

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- COA to inquire and determine the appeal expeditiously and declare findings, not later than 60 days from date of filing the appeal.

Appeals to Supreme Court – S.

27B, TAT Act.

- Appeal of COA Decision by aggrieved party to Supreme Court – with leave of Court – by way of, Notice of Appeal.

- The Appeal to be lodged with a Certificate of the COA that matter raises questions of law of great public importance or if Supreme Court (to see that justice is done) considers appeal should be heard .

- SC to inquire and determine the appeal expeditiously and declare findings, not later than 30 days from date of filing the appeal.

Appeals to Supreme Court – S.

27B, TAT Act.

- Appeal of COA Decision by aggrieved party to Supreme Court – with leave of Court – by Notice of Appeal.

- The Appeal to be lodged with a Certificate of the COA that matter raises questions of law of great public importance or if Supreme Court (to see that justice is done) considers appeal should be heard .

- SC to inquire and determine the appeal expeditiously and declare findings, not later than 30 days from date of filing the appeal.

Stay of Executions /

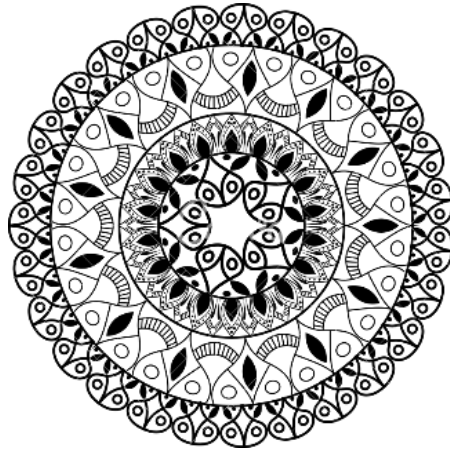
Enforcement – S. 28, TAT Act

- Where Application for Review or Appeal has been lodged:

- The reviewing body may stay or otherwise affect the operation or implementation of the decision under review.

- Reviewing Body is either TAT or Court, as may be applicable.

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Volume Four

**TRIAL ADVOCACY**

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### **Definitions of Advocacy**

Advocate comes from the Latin word -advocatus "one called to aid". The means by which a barrister puts their client's case to the court, and may be both written and oral.

Advocacy Training Council U.K

- A performance skill. It's function is to communicate and persuade.

Technique of Advocacy by John Munkman

- "...Advocacy is more an art than a science. It cannot be conducted according to formulae. Individuals differ in their style and approach."

### **BASIC PRINCIPLES OF PERSUASION**

- Civility
- Openness or objectivity
- Speak Plainly
- Be Yourself
- Meet Judicial Expectation
- Credibility

### **FUNDAMENTAL TRIAL ADVOCACY SKILLS**

- Audibility
- Proficiency in the language of court
- Quick on the uptake, wit
- Confidence
- Perseverance, persistence and diligence
- Knowledge of the law (evidence and procedure)
- Knowledge of mankind
- Clear, logical thinking and expression

“Successful advocates use all reasonable tactics and techniques to present a case while being governed by and balancing the best interests of clients, rules, ethics, common sense, and the public interest.”

## COURT ETHICS

### The Rules

- The Advocates Act Cap 267
- The Advocates (Professional Conduct) Regulations. (Under section 77(1)(a) of the Act.) S.I. 267.—2
- Chief Justice’s Circulars

### The Community

- The Bar & Bench
- Uganda Law Society
- Professional Associations
- Reputation

### Advocates (Professional Conduct) Regulations –Duties during Trials.

- Reg. 2 on the Manner of acting on behalf of clients
- Reg. 3 on Withdrawal from cases
- Reg. 4 which prohibits Advocates from prejudicing former clients
- Reg. 5 Duty to appear in court
- Reg. 9 which prohibits Advocates from Personal involvement in a client’s case
- Reg. 11 which prohibits Advocates exploiting a client’s shortcomings
- Reg. 12 Advocate to advise clients diligently
- Sections 150 & 151 of the Evidence Act which prohibits the asking of indecent and scandalous questions and those intended to insult or annoy witnesses.
- Reg. 13 prohibits Unlawful arrangement with public officers, etc
- Reg. 14 which requires undertakings by an advocate to another advocate to be made with authority and not to be knowingly breached.



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- Reg. 15 which requires affidavits & witness statements to contain truth.
- Reg. 16 which requires advocates to inform the court of his or her client's false evidence.
- Reg. 17 on the duty of an advocate to advise the court on matters within his other special knowledge.
- Reg. 18 which prohibits coaching of clients
- Reg. 19 which prohibits advocates from hindering witness or intimidating them to benefit his client's case.
- Reg. 21 which requires an advocate to only act for client of other advocate with their consent.

### Ethical Duties

COURT	CLIENT	OPPOSITE PARTY	PUBLIC
•Decorum	•Competent Representation	•Courtesy & Civility	•Truth
•Professionalism	•Confidentiality	•Professional Communication	•Justice
•Truth & Justice	•Privacy & Data Protection	•Co-operation	•Probono
•None interference with due process	•None exploitation of weaknesses	•Not Misleading	•Propriety
		•Not to intimidating opposite witnesses	

## CASE ANALYSIS

### Introduction

“Litigants have four (4) tools –

- Substantive law
- Procedural law

- Evidential law
- Persuasion law ”

James Mukasa Ssebugenyi, SC

## THE CASE ANALYSIS PROCESS

1. Identify the general area of law which covers the facts of a case.
2. Identify an applicable Cause of Action based on which the remedies sought arise.
  - If more than one, choose the most viable / tenable. In criminal cases, it is the offence disclosed by the facts.
  - Ascertain the elements of that Cause of Action or Ingredient of the offence.
  - Do the same for the defence is on the defence side.
3. Consider the Facts which fulfil each element / Ingredients
4. Review the Strength and weaknesses of the case
5. Deal with the weaknesses of the case
6. Develop a Case Theory and a Theme that sells the Theory.
7. Develop a Trial & Suit Disposal Strategy

Every Civil Case must be founded on a Cause of Action;

- a) Right
- b) Violation of Right
- c) Damage / Injury
- d) Defendant being liable

Example of a Civil Causes of Action

Tort (Civil) or Criminal

- Assault
- Battery

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- Common assault Sec. 235 PC

Every Criminal Offence must be provided under the Law

- a) Provision of Law creating an offence
- b) Ingredients of that offence

## THE BASIS OF CASE ANALYSIS FOR DEFENDANTS

Civil Defences are based on;

Technical Defences based on points or principles of law e.g. Limitation, Jurisdiction, Res Judicata, Burden of Proof. Specific defences available to specific causes of action e.g. For Negligence, contribution of a Plaintiff.

Criminal Defences are based on;

Principles of Law such as;

- Principle of Illegality,
- Burden of & Standard of Proof,
- Presumption of Innocence.

Specific defences provided under the law e.g. against Theft –Claim of Right.

Defences

- Necessity
- Self defence
- Provocation.

## ELEMENTS FOR ASSAULT IN TORT

- Assault
- Intent
- Apprehension of a harmful contact, and.
- Causation

## **BATTERY**

- an act by a defendant;
- an intent to cause harmful or offensive contact on the part of the defendant; and
- harmful or offensive contact to the plaintiff.
- Damage to the Plaintiff

## **DEFENCES**

- a threat of unlawful force or harm against them;
- a real, honest perceived fear of harm to themselves (there must be a reasonable basis for this perceived fear);
- no harm or provocation on their part;
- there was no reasonable chance of retreating or escaping the situation.

Example -Facts In Favour Of Plaintiff –Battery

## **STRENGTH**

- 1.Bouncer beat Plaintiff
- 2.Injury to the head
- 3.Current condition of Plaintiff
- 4.Plaintiff was customer
- 5.Bouncer employee of Bar
- 6.Loss of career as best musician

Weaknesses

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- 1.Plaintiff started the fight
- 2.History of fighting
- 3.Drunk alcohol
- 4.Bar rules prohibited fighting.
- 5.Bouncer was doing his job i.e. Protecting other customers & property

Example -Facts in favour of Defendant –Battery

### **STRENGTH**

- 1.Bouncer beat Plaintiff
- 2.Injury to the head
- 3.Current condition of Plaintiff
- 4.Plaintiff was customer
- 5.Bouncer employee of Bar
- 6.Loss of career as best musician

Weaknesses

- 1.Plaintiff started the fight
- 2.History of fighting
- 3.Had alcoholic drinks
- 4.Bar rules prohibited fighting.
- 5.Bouncer was doing his job i.e. Protecting other customers & property

## **EXAMINATION IN CHIEF AND WITNESS STATEMENTS**

### **Introduction:**

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The ability to examine and oppose the examination of witnesses in open court in an adversary setting is the most basic skill of the trial lawyer. Yet the most common criticism made of trial lawyers is their inability to conduct proper, intelligent, purposeful examinations and to oppose those examinations.

A good lawyer leads his or her witness to turn evidence into fact and fact into truth. It's the duty of Counsel representing the prosecution to ensure that he or she discharges the burden of proving the case beyond a reasonable doubt (criminal proceedings). Prosecutors must therefore call witnesses in every trial to prove their case to the expected standard. This is the same position even in civil proceedings where the burden of proof is either on the balance of probability or slightly above the balance of probability but not beyond reasonable doubt. Examination in Chief is the keystone in the prosecution's arch. It is also important to the defender who will call witnesses in support of the defensive theory. Direct examination is a vastly overlooked skill. Unlike cross-examination, there is very little written material to guide practitioners through the examination of their own witnesses. This is surprising because cases are actually won or lost on the fruits of direct examination. Examination in Chief is one of the most subtle and sophisticated form of advocacy. It is subtle because a good chief examination focuses entirely on the witnesses and their evidence. The evidence should appear to be flowing effortlessly from the witness. It should look easy. Whereas the witness should be memorable, the lawyer should not. Chief examination is sophisticated advocacy because during its course, counsel is actually presenting their case, while trying to satisfy a multitude of objectives, such as maximizing the potential of each witness to present all relevant evidence in as logical, credible, persuasive and accurate manner as possible, while knitting all witnesses' evidence together in a coherent fashion in order to prove all the elements of the offence beyond a reasonable doubt.

Examination in Chief thus becomes a starting point for any litigation. In the adversarial system of our country, it becomes a tool of extracting truth from the facts.

### **Examination in Chief:**

The examination of a witness by a party who calls him shall be called examination in chief (see Sec. 136 (1) of the Evidence Act). Examination in chief is the first examination after the witness has been sworn in or affirmed. It is a province of a party by whom the witness is called to examine him in chief for the purpose of eliciting from the witness all the material facts within his knowledge which tend to prove the party's case. Examination in Chief is also known as Direct Examination. This is where you obtain evidence from your own witnesses. You need to ensure that your witnesses give clear evidence and that they do not talk too fast in order that notes can be taken. Ensure the witness faces the Judge or Judicial officer when answering questions and is not looking at you. This will enhance the quality of their evidence. When asking your witnesses questions, you need to try to elicit from them only the evidence that is relevant. Always therefore bear in mind why you are asking your witness a particular question and what you want to hear from them.

### **OBJECTIVES OF EXAMINATION IN CHIEF:**

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Examination in chief of a witness is intended to achieve a number of objectives;

### Major Objectives

- a) To determine admissibility of evidence;
- b) To prepare a witness to lead evidence in a trial;
- c) Present persuasive and credible evidence; and
- d) To prove each and every element of the cause of action, offence and or defence to the expected standard.

### Minor Objectives

In addition, you are also trying to achieve the following slightly less essential, but still important, objectives:

- a) Present a logical, complete and coherent theory of your case;
- b) Present each witness in the best possible light;
- c) Use the evidence of one witness to support another so that a seamless cloth may be woven of the proven fact;
- d) Fill in gaps in the evidence and attempt to explain any inconsistencies;
- e) Shut down potential cross-examination thereby limiting the exposure of your witnesses; and
- f) Allow the defence as little room to move as possible by minimizing the possibilities of a defence supported through cross-examination of witnesses.

### The Directed Approach to Examinations-in-Chief

Effective questioning techniques – Use of open ended questions.

- The Difference between closed questions and leading questions

Moving from “open questions” to “directed examination” – planning the direct examination – breaking down the topics/issues – effective problem analysis

### Understanding the Importance of Preparation

Most witnesses have no prior experience in testifying. As counsel, it’s your job to ensure that both you and your witnesses are thoroughly prepared. This includes fully understanding what evidence needs to be elicited from each witness, and preparing your witnesses so that they can effectively convey this information. In this session, you will learn:

- What does an unplanned examination-in-chief look like?
- How to elicit the information you need from your witness

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### Headlines and transitions

- Why are headlines so important;
- Effective use of headlines to create the outline of a good examination;
- Listening, and looping back;
- How to be more persuasive;
- Techniques to effectively follow up, clarify and qualify facts; and
- How to keep control of the witness

This session will also include a discussion about practical tips and strategies on how to make your witness more persuasive. You'll engage in hands-on exercises and drills focused on how you should deal with a witness when they do not provide you with the answer you were hoping for, and learn strategies for how to manage the following issues:

- The witness who talks too quickly or too softly;
- The rambling witness;
- Dealing with partial or insufficient answers;
- Using notes to help direct questioning;
- Making eye contact, and with whom;
- The importance of pace and strategies for setting the right one;

### Leading Questions

During examination-in-chief the advocate is forbidden from asking their witnesses leading questions. A leading question is one which in its phrasing suggests its own answer<sup>1</sup>. By way of an example, the man wearing a red and white jumper, wasn't he? By suggesting the answer to the witness you reduce the witness' impact. Leading questions are forbidden in examination-in-chief because the lawyer is not allowed to lead their witness and in effect put words into their mouth. When you call your own witness you hope and expect that they will provide evidence that is favourable to your case and will 'come up to proof'.

As a general rule when you ask your witness questions you should phrase your questions using simple words and phrases to ensure the witness fully understands what you are asking them. When questioning your witnesses consider using points of reference to add variety to your questioning and to move the witness along from one episode to the next.

For example, 'Tell us what happened after you saw the car swerve?' Generally, a leading question suggests the answer, or assumes the existence of a disputed fact. You are allowed to ask leading questions about non-disputed



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matters. For example: instead of “where were you on the night of the 15th?”, ask “were you at the bar on the night of the 15th?”

### Open and Closed Questions

You can ask your witnesses a variety of open and closed questions. To obtain the information you require from a witness it will be necessary to use for example closed questions to establish undisputed aspects of the case such as the background and set the scene and to bring out details or emphasise a particular part of the story. This more so because some closed questions can be leading in certain aspects. Open questions are the best in allowing the witness to freely tell their part of the story or to turn their attention to a subject and then ask the witness to talk about that subject.

Your questions should be short and concise so when the judge hears the question and hears an equally short and concise answer, his or her next thought is one of the “W’s.” Your examination should follow that train of thought.

For example, if you ask about a meeting, the listener would usually then start to ask in his or her mind the following questions:

- a) When was the meeting held? (Time)
- b) Where was the meeting held? (Place)
- c) Why was the meeting called? (Reason)
- d) Who was present at the meeting? (People)
- e) What was discussed at the meeting? (Occurrences/Activities)
- f) How was the meeting conducted? (Procedures or processes)

Ask yourself how an event or unfold by putting yourself in the witness’ shoes. Your own mind would likely then follow this 5W and 1H track. So, the questions in court or in an arbitration should follow that track.

Do not leave the witness to do all the talking. Oftentimes when reviewing a transcript in the Court of Appeal, you will see a short question, followed by a half-page answer. If you read a transcript like that then, in my respectful opinion, the direct examination has not been properly carried out. One should never lose control of a witness and dictating the pace of the evidence is crucial depending on the ability of the judge or Judicial officer either to electronically or manually make notes.

There is no reward for speed. Remembering that judges are mere mortals should be your guiding perspective. Always keep an eye on the judge or Judicial officer before going to the next question. When the judge or Judicial officer is required to look at an exhibit or look at one document in a volume of exhibits, make sure that the judge is at that exhibit before you begin the question related to it.

A guide to the actual Examination-in-Chief

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Trying out witness examination for the first time can be intimidating. You're there to either make or break the witness, with only your skills, case theory, and wit. As Walter Sofronoff QC wrote, it is "a species of unarmed combat"; it's raw advocacy at its most exhilarating. You can spend years learning witness examination properly, but it's always good to start with some of the fundamentals. Here are some top guides to set you on your way.

These include skills like speaking clearly and slowly, having good posture and eye contact, and trying to stamp out your 'gremlins' - things you subconsciously say or do while speaking, like saying 'um', or clicking a pen. Using plain English is important, as you're communicating with everyday people. Say "car" and not "automobile" for example, to save everyone from becoming confused or distracted by your vocabulary.

Professor Peter Lyons wrote, "the first aim is to strengthen your client's case by highlighting the good points through the opponent's witness and by putting facts that the witness will agree with..." – and they won't agree with you if you're being nasty!

Put simply, that's the version of events you want to prove, summarised in four dot points. It should be your four strongest points that directly address the key elements of the relevant law. Use this to guide your questioning. Most people agree that examination-in-chief is the harder of the two skills. You have to ask your witness questions in a way that enables them to tell their story to the court.

A good examination plays out like a story. When examining your witness, you want people to be totally focused on your witness. Try and ask short, simple questions that allow your witness to tell a story - who, what, when, where, and why. Ask about events in chronological order.

While the focus isn't on you, you need to remain in control, so the witness says only the evidence you want them to. You can interrupt the witness where it's appropriate to do so. Also, try 'piggybacking' your questions: What did you see at the farm? A herd of cows and some horses. I want to ask you about the horses, where were they located?

### **EXAMINATION-IN-CHIEF**

- 1) Know the theory of your case
  - a) What are the major issues in the case? (start with your pleadings)
  - b) What is the theory of your case?
  - c) What evidence do you require to support the theory of your case?
  - d) Can some of the evidence be obtained through a Request to Admit?
  - e) What evidence do you need to rebut your opponent's theory?
  - f) What do you want to say in your closing submissions?

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- g) How will the evidence of each of your witnesses add to your closing submissions?
- 2) Consider the purpose for which you are calling the witness
- a) Can this witness testify to facts that assist you in advancing your case?
  - b) Are there exhibits that must be introduced through this witness?
  - c) Is there another witness you are already calling that can testify to the same facts/identify the same exhibits?
  - d) Can this witness bolster or detract from the credibility of others that will testify?
- 3) Prepare your witness
- a) Before trial, meet with your witness. Review any prior testimony and any documents you intend to introduce through the witness.
  - b) Discuss with your witness how the process in court will unfold. Describe to the witness what she can expect to see in court – i.e. Judge, Court Clerk, opposing counsel, Court orderly, others.
  - c) Do not ask the witness to memorize evidence.
  - d) Do not coach the witness or offer answers to the witness during preparation.
- 4) Create an outline for your examination
- a) What do you need your witness to say?
  - b) What questions do you need to ask to elicit the necessary information?
  - c) Consider the order and organisation in which you intend to ask the question (chronologically; thematically). A good examination should be organized in chapters guided by the various issues or elements to prove.
  - d) Consider questions that may be posed in cross-examination which you can diffuse during examination-in-chief. 1.14 Conducting your Examination-in-Chief

Form of your Examination – telling a persuasive story

- a) Lead through preliminary, non-contentious areas. For example, “Ms. Jones, you are 32-years old?” “You have been employed as a teacher for 9 years?”
- b) Do not ask leading questions on contentious and/or significant issues. It is always better for the trier of fact to hear the story from the witness and not counsel.
- c) Organize your questions topically, giving the witness and the trier of fact the opportunity to follow the flow of your examination.

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- d) Decide whether it is more persuasive to ask questions in a chronological order or by theme/issue. The questions posed to the witness must be presented in some form of order. Do not lurch from topic to topic. This will confuse the witness and annoy the trier of fact. It will also detract from the persuasiveness of the witness' story.
- e) Use short, simple language when formulating your questions. Do not use overly technical language or "legalese".
- f) Often, simple "who, what, where, when, why" questions will allow the witness to give her evidence in a clear and simply manner.
- g) Listen to your witness. Often a witness may give an answer that requires follow-up. If you are not listening, you will miss that opportunity.
- h) Use looping techniques to repeat the key theme or answer in a series of questions on an important issue. For example, in a case involving a car accident, where the witness has just answered a series of questions involving her observations of the accident: "After you saw the Honda rear-end the Toyota, who did you contact?" This repeats helpful evidence and provides the witness with guidance as to where you are moving next.
- i) Prepare to start and finish strong. Deal with less important and/or more difficult evidence in the middle of your examination.
  - j) Humanize your witness by asking questions that will elicit empathy. This helps to build the witness' credibility and relate-ability.
  - k) Where appropriate make use of pictures, diagrams or other demonstrative aids. This will assist the witness in giving her evidence and will give the trier of fact a concrete visual, to compliment the witness' words.

### 2) Hazards to Avoid during Examination-in-chief

- a) Do not ask your witness irrelevant questions. If the answer it elicits is not important to your overall theme or to rebutting your opponent's case, do not ask the question.
- b) While it is important to neutralize bad facts when possible, do not waste your entire examination-in-chief doing so.
- c) Discuss evidentiary issues with your opponent beforehand, so to minimize objections during your examination-in-chief.
- d) Do not ask compound or overly complicated questions such as questions which contain many facts or technical language. This will only confuse your witness and the judicial officer.

### **Witness Statements**

Civil proceedings differ from criminal proceedings in the form of witness evidence and the process of its preparation. Whereas gathering evidence in criminal proceedings starts with recording statements at police,

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gathering necessary exhibits and later on orally lead this evidence in court, in civil proceedings, after pleadings are closed, mediation and scheduling, witness statements are prepared to prepare for the trial. These statements will have to be confirmed at the hearing by a witness who made it and later adopted as his or her evidence in chief.

### Guide in Preparation of Witness statements

There is relatively little guidance to litigators on the process of taking witness statements. What are appropriate questions and, to what extent, can the witness be “guided” by the lawyer. These are difficult and sensitive topics which have been considered many times in practice. There is currently no law in Uganda regulating the procedure for preparing witness statements, the practice is majorly guides by different courts and different judges whose approach on the subject is also not similar. Although this seems to be the case, there are several principles and guidelines in preparing witness statements. Let’s look at some of these hereunder;

Principle 01: the statement should be of the witness and not submissions of Counsel representing the party

This principle must be respected: the statement should be the evidence of the witness and should cover only those matters to which he can properly speak to.”

Principle 02: the purpose of a statement is to record the evidence of a witness

The purpose of a statement is to record the evidence of a witness. The court does not expect to receive a document which is in large measure framed by lawyers and which uses language which the witness would not use. Words should not be put into a witness’s mouth. If a party produces such a document as the evidence of the witness, it is likely that it will receive little weight from the court and it may in some circumstances significantly damage a party’s case. Equally, if it appears that a witness has been improperly tutored in his evidence, the court is likely to discount his evidence. In preparing such statements, legal advisers should bear in mind that a witness may have to justify on cross-examination all the information contained in his or her statement.

Principle 03: Care needs to be taken and the witness must be given time to consider the statement

Care should be taken to ensure that the witness’s testimony is accurately represented. A witness should also be given the opportunity to consider carefully what the draft statement says and to confirm its terms or instruct its amendment before he is asked to sign the statement. The legal advisers should also inform him that he may be cross-examined on his statement in court.

The wording from the judgment of Peter Smith J in *A & E Television Networks LLC -v- Discovery Communications Europe Limited* [2013] EWHC 209 (Ch):

This case demonstrates the need for solicitors preparing witness statements to curb their enthusiasm in seeking to obtain the best for their clients. It must not be forgotten that witness statements are merely a replacement for evidence which a witness previously used to give live in chief. It is intended to be the factual evidence of the witness in his own words. Too often witness statements are drafted by solicitors who put words in their mouth

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to achieve a better result. Witness statements can then be changed from drafts to a later stage without the witness understanding the significance of the change.

### Principle 04: Avoid hearsay statements

Further when preparing hearsay statements it is even more incumbent on the advocates not to manufacture things to put that evidence in the best light for their clients. The Court will not have any opportunity to explore that evidence with live witnesses and the duty on the advocate or counsel is therefore even more clear to confine witness statements to what the witness would have said in his own words had he or she been giving evidence.

Equally I do not think it is appropriate for a witness to have his statement taken from him when he does not realise that it is being taken from him for the purpose of giving evidence. That too is unfair. Further when such a person objects to giving evidence it cannot be appropriate in my view for that statement which has been taken down to be served up as a hearsay statement without reference to that potential witness (the more so when he has said he does not want to give evidence). Without the investigations in cross examination in this case none of the actual defectiveness of the hearsay statements would have come to light.

### Drafting Witness Statements

The art of drafting witness statements is yet another skill advocates should properly learn. The dictum below presents a very unfortunate situation in as far as drafting witness statements is concerned.

HH Judge Oliver-Jones QC (Smith -v- J&M Morris (Electrical Contractors) Limited. [2009] EWHC 0025 (QB):

“I have often had occasion to remark about the failure to comply with the CPR so far as witness statements are concerned, as well as the obvious lack of skills of witnesses, and

Following that dictum, “4 GOLDEN RULES” have been suggested in drafting witness statements. Let’s deal with these rules now. Those acting for litigants, in formulating them. It is not infrequently the case that witness statements prepared by litigants-in-person are superior in form and substance to those prepared by solicitors or their agents based upon questionnaires, interviews (often by telephone) or correspondence with witnesses. It is often the case that witness statements, drafted by solicitors or their agents in good faith ( I exclude, of course, any case of deliberate intent to deceive by a witness or drafter), are signed or otherwise accepted by witnesses without any or any proper consideration of their accuracy, completeness or even truth”.

Any one preparing a witness statement of any of your witness, you should take care to observe 4 ‘golden rules’:

- 1.the witness statement should ‘tell the story’ in chronological order;
- 2.the factual issues in the case should all be dealt with;
- 3.the witness statement is a statement of fact, not opinion; and

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### 4. the witness statement must be true.

Golden Rule 01: the witness statement should ‘tell the story’ in chronological order

You should not forget that you (almost certainly) will have personal knowledge of the events covered by the witness statement. The Judge will not. It is important both that you cover all the necessary background and that you do so in chronological order. Your aim should be to get your side of the story across to the Judge. To do so draft the statement in clear language. A statement which does not cover the material in chronological sequence is likely to confuse. If, as advised, you have prepared a chronology this will help you when preparing your witness statements. But discretion is required. Setting out the necessary background is very helpful, but including a wealth of material that is not essential is likely to detract from the important parts of the statement.

Nevertheless it is necessary to include everything that might be important because the Judge may not allow you to give evidence of additional matters which could have been, but were not, included in your witness statement or the witness statements of your witnesses. Use your discretion. If in doubt include the material in the statement.

Golden Rule 02: the factual issues in the case should all be dealt with

By the time witness statements are prepared and exchanged, most times;

- i) the pleadings (statements of case) will be completed and;
- ii) discovery and inspection will have taken place. You will be able to work out what issues of fact exist between you and your opponent.

Review those issues in the light of any new documents thrown up by disclosure. The sensible litigant prepares a list of these issues, and makes sure that all the issues are covered in his witness evidence. Not every witness will be able to deal with every issue, but every witness who can deal with an issue should cover it in his statement. If any issue is not covered by a witness statement you should do all you can to find a witness who can deal with the issue in question.

Golden Rule 03: a witness statement is a statement of fact, not opinion

A witness statement must be confined to statements of fact, without any expression of opinion. Only expert witnesses are permitted to give opinion evidence. Occasionally an opinion is included in a witness statement. Once this is identified the Judge will have no difficulty in putting a line through it both metaphorically and practically so you do not have to worry if the odd opinion slips into one of your witness statements. However, unguarded opinions from yourself or your witnesses can sometimes affect your case adversely.

Golden Rule 04: the witness statement must be true

In all but the exceptional case each witness’s statement will “stand as his evidence in chief”. By this is meant that, provided the witness (on oath or affirmation) confirms the truth of his statement when he is called to give evidence at trial, the statement will form part of the evidence in the case. It is critical therefore that you make

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sure that the maker of each statement, and yourself as the litigant on whose behalf the maker is being called to give evidence, checks the statement carefully (cross-referring to the documents and other witness statements as necessary) before signing it as true. Too often (indeed far too often) witnesses who have had statements prepared for them by counsel tell the Judge that matters in the statement are not correct; they say (all too believably) that they simply signed what the counsel had drafted for them without reading it through carefully and critically. This reflects badly not only on the witness, but on the whole case presented by the party calling the witness. Accordingly, it is most important that, as far as possible, you make sure that each witness statement is in the witness' own words, and that it is checked very carefully before it is verified by the witness as true.

### Duty of Counsel Preparing a Witness Statement

Counsel in civil proceedings are typically involved in preparing witness statements. However, the courts have emphasised that a witness statement must, so far as possible, be in the witness's own words: see e.g. *Aquarius Financial Enterprises Inc. v Certain Underwriters at Lloyd's* [2001] 2 Ll Rep. 542 at 547. When settling witness statements, great care must be taken to avoid any suggestion that;

- a) the evidence in the witness statement has been manufactured by the legal representatives; or
- b) the witness had been influenced to alter the evidence which he or she would otherwise have given.

The legal advisers, including – where appropriate – counsel, can consider the draft statement to ensure that the witness has covered the relevant matters to which he can speak. They can also seek to clarify ambiguous statements within his evidence when his statement is in draft, and seek his comments on documents and other materials which might appear to raise questions about the accuracy of his recollection. Where there are matters, which the legal advisers think he might be able to address, they can properly ask him whether he can give evidence on those subjects. They can show him documents which he might have seen at the time, and if he had seen them, ask for his comments on them. Where the witness comments on documents which he had not seen at the relevant time, the fact that he had not seen them then should be made clear in his statement.

You should also take note of the following guide;

#### Guide 01: Preparing a good witness statement is hard work and time consuming

You should never leave it to the last minute. Unless the maker of the statement has an exceptional natural fluency, you will probably find that a statement has to go through several drafts before it reaches a state where it covers all the necessary material in a clear manner, and the witness is confident that it is all accurate. In this regard a word processor is very useful. Never forget that at trial you will be questioned on your witness statement and your witnesses on theirs. Get it right. Do not leave hostages to fortune.

Guide 02: Where it is sensible to do so, you should divide the statement into separate sections each with its own heading or sub-heading.

For example in a building claim, if there are problems with the roof, and with the windows, and with the doors, the evidence relating to the roof could be put under the heading “Roof”, and the evidence about the windows



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and doors under separate headings “Windows” and “Doors”. Each section will probably be best dealt with in chronological sequence. The fact that the chronologies of the individual sections will overlap will not matter; the Judge is likely to consider the evidence under each section separately.

Guide 03: It is essential that every witness statement is divided into numbered paragraphs

These paragraphs should not be too long, and it is very unwise to include evidence on two distinct matters in the same paragraph. You may separate them and present your statements in a chronological way.

Guide 04: Attach relevant documents to your statement

A witness statement may refer to one or more documents; it is often important that it does. By the date of exchange of witness statements all relevant documents should have been disclosed, but if a document not previously disclosed is referred to in a witness statement the opposing party may require disclosure of it. It is a common practice amongst advocates to attach to the witness statement copies of all documents referred to in that witness statement. This is not necessary where it is clear what document is being referred to, and if a proper list of documents has been served by the party it is perfectly sensible to save the copying and refer, for example, to ‘the invoice no.35 of the Claimant’s list of documents’ on pg. 5 of the Trial Bundle”

Guide 05: The evidence in a witness statement must not be partial

It must contain the truth, the whole truth and nothing but the truth in respect of the matters on which the witness proposes to give evidence (see Handbook; Chancery Guide 2016, Chapter 19; Queen’s Bench Guide, 2016, paras. 7.9.2 to 7.9.5; Admiralty and Commercial Courts Guide, para. H.1.)

One should remember that “great care... must be taken in the preparation of witness statements. No pressure of any kind should be placed on a witness to give other than a true and complete account of his or her evidence. It is improper to serve a witness statement which is known to be false or which the maker does not in all respects actually believe to be true” (Chancery Guide 2016, para. 19.6).

One should also remember that “a professional adviser may be under an obligation to check, where practicable, the truth of facts stated in a witness statement if you are put on enquiry as to their truth” (Chancery Guide 2016, para. 19.6). For example, you may be put on enquiry in relation to witness X’s evidence, because witness Y’s evidence contradicts it, or because there is documentation which contradicts it. However, whilst you may be entitled or obliged to check the evidence “it is not for you to decide whether your client’s case is to be believed”.

You are entitled and it may often be appropriate to draw to the witness’ attention [to] other evidence which appears to conflict with what the witness is saying and you are entitled to indicate that a court may find a particular piece of evidence difficult to accept. If the witness maintains that the evidence is true, it should be recorded in the witness statement and you will not be misleading the court if you call the witness to confirm their witness statement.

Equally there may be circumstances where you call a hostile witness whose evidence you are instructed is untrue. Where there is evidence which clearly contradicts a witness it may be that the duty to not knowingly or

recklessly mislead the court comes into play, so that whilst the questionable evidence can be put forward, counsel may have a duty also to ensure that the contradictory evidence is drawn to the court's attention. In this aspect regard must be had to "knowingly misleading the court includes being complicit in another person misleading the court... recklessly means being indifferent to the truth, or not caring whether something is true or false".

Counsel has a duty, therefore, to ensure that such notice is given if counsel becomes aware that a witness statement contains material which is incorrect: for example, if a client were to inform you that an earlier statement or instruction, now contained in a witness statement, was incorrect or untrue. However, if you only suspect or believe your instructions (and evidence reflecting them) to be untrue, for example because of contradictory evidence or documents, then it is not for you to decide whether this is in fact the case.

The Civil Procedure (Amendment) Rules of 2019 S.I. No. 33 of 2019

Under Rule 5 on the Amendment of Order 43, the above principles have been codified and made specific provisions for the drafting, filing, service and tendering of witness statements in court. They also provide for the content that should be covered by witness statements. Rule 5(10) defines a witness statement to mean written testimony signed by a witness and filed in court and served on the opposite party for purposed of having it tendered in court as the evidence in chief of the witness.

Rule 5(2) provides that a witness must appear in court and take oath before their statement is tendered as evidence in chief. Rules 5(5) then provides that statements of witnesses who do not appear in court should be expunged from the record. The only except to this being where parties consent to the statement remaining on record.

Rule 5(3) allows witnesses to correct errors in the statements which do not go to the substance of the testimony and with leave of court. Rules 5(8) provides for the content of a witness statement and Rule 5(6) makes the timelines for filing a witness statement mandatory. Lastly, Rule 5(7) prohibits the hearing of witnesses without witness statements except with Court's leave.

## **WITNESS PREPARATION**

It is important to note that while witness coaching is prohibited, a process of witness preparation is permissible and desirable, may extend to advising witnesses as to the basic requirements for giving evidence, in order to assist witnesses to give their best at the trial or hearing but risking their evidence becoming anything other than their own uncontaminated evidence.

The following approach is suggested in relation to any witness preparation process for the purpose of civil proceedings:

- a) Any witness preparation process should normally be supervised or conducted by a counsel.

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b) In any discussions with witnesses regarding the process of giving evidence, great care must be taken not to do or say anything which could be interpreted as suggesting what the witness should say, or how he or she should express himself or herself in the witness box: that would be coaching.

c) Counsel should only approve or take part in a mock examination-in-chief, cross-examination or re-examination of witnesses who are to give oral evidence in the proceedings in question if, and only if:

1) Its purpose is simply to give a witness greater familiarity with and confidence in the process of giving oral evidence;

2) There is no risk that it might enable a witness to add a specious quality to his or her evidence; and

3) In conducting any such mock exercises, counsel does not rehearse, practice or coach a witness in relation to his/her evidence.

## DOCUMENTARY EXHIBITS

### Introduction

An exhibit is a document, record or other tangible object formally introduced as evidence in the court by a party who wishes to rely on such evidence to prove their case. Exhibits are the only form, apart from the testimony of witnesses, in which evidence can be received. Spoken testimony typically presents a recitation of the witness's memories and perceptions. Exhibits, on the other hand, allow the judicial officers to use their own senses and perceptions to be persuaded of certain facts.

At trial, exhibits enhance or supplement the testimony of the witnesses. Exhibits can make information clearer, more concrete, more understandable, and more reliable. In all cases, Exhibits help court see the facts as opposed to being told.

### TYPES OF EXHIBITS

Although the categories tend to overlap and the lines cannot be drawn with precision, it is often helpful to think of exhibits as falling into these three categories:

- Real or tangible evidence,
- Demonstrative evidence, and
- Documentary evidence.

### DOCUMENTARY EVIDENCE

Documentary evidence generally refer to virtually writings such as letters, contracts, leases, memoranda, reports, ledgers, printouts, business records, etc. It also includes photographic and electronic evidence.

The value of documentary evidence cannot be overstated. Intrinsic writings can provide proof of past events in a way that mere testimony cannot. Imagine a criminal case in which the defendant has raised an alibi defence, claiming that on the day of the crime he was visiting relatives in a distant city. The testimony of the defendant and his family is relevant and admissible to establish the alibi, but it will be subject to vigorous attack on cross-examination. A signed hotel receipt for the date in question stands to be far more persuasive than any witness as to the defendant's whereabouts.

## **METHOD OF INTRODUCING DOCUMENTS IN TRIALS**

### **Criminal Trials**

In Criminal Trials, usually documents are tendered through the testimony of witnesses. However, to avoid surprise and ambush, the prosecution provides their documents to the defence through the discovery process before trials. It is best practice for the defence to also exchange their documents with the prosecution ahead of time.

### **Civil Trials**

In Civil Trials, documents can be tendered and admitted into evidence either by agreement between the parties at Scheduling or if the documents are not agreed to, by Counsel formally applying their admission into evidence.

The Civil Procedure (Amendment) Rules of 2019 in amending Order 18 to include Rule 5A now provide that evidence during civil trials is through witness statements. Rule 5A (8) (j) provides that witness statements shall include documents on which the witness relies, that have not already been agreed to at the scheduling conference; and under (l) shall sufficiently identify any document to which the statement refers without repeating its contents, unless it is necessary for identification of the document. This introduces two different ways documents in civil trials are admitted into evidence;

### **Agreed Documents**

Documents are agreed to if they are not disputed to by the opposite party. The reasons for dispute usually are because they do not fulfill the various rules of evidence as to authenticity, relevance, hearsay etc. The commonly agreed to documents will be those that probably involve both parties or whose existence and accuracy is not disputed. The process of admitting them into evidence does not require a formal tendering because parties can consent to the documents as agreed to during scheduling. They are then listed in the Scheduling Memorandum, compiled into a Trial Bundle and exhibited at Trial.

### **Disagreed Documents**

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Where documents are not admitted to by the opposite party, then the party who wishes to rely on them must formally lead evidence to prove their authenticity, relevance and fulfilment of other evidential rules and then formerly apply to court for them to be tendered.

### Joint Scheduling Memorandums & Trial Bundles

A trial bundle refers to a collection of all the documents to be relied on at a trial by the judicial officer, witnesses and other relevant parties. When creating a trial bundle, it should be regarded as being as much part of the presentation of the case as what is said in court. Trial Bundles serve many uses such as effective presentation of a case and assistance to all parties handling the documents to enable the hearing proceed smoothly and expeditiously.

The Civil Procedure (Amendment) Rules S.I. No. 33 of 2019 now have detailed provisions for the conduct of interparty scheduling and preparation of trial bundles under the Second Schedule. They provide for the bundles to include indexes, be numbered and made in 5 (five) copies etc. They also provide for the process through which both counsel must cooperate in the preparation of joint scheduling memorandum and trial bundles with a penalty of costs for uncooperative counsel. The Rules also provide for the treatment of admitted or agreed documents and disputed or disagreed documents in the bundles.

Note: For your first workshop next week, you will study schedule the said Civil Procedure (Amendment) Rules S.I. No. 33 of 2019 and conduct the party to party joint scheduling process as well as create the trial bundle within the firm.

## DOCUMENT REFERENCES AT VARIOUS STAGES

Apart from court procedures to produce documents, documents go through different stages before forming part of the court record. These include;

### i. Annexures to Pleadings or Documents on Police Investigation Files

When attached to court pleadings or provided to Defence Counsel.

### ii. Identified Documents

When witnesses have introduced them to court but for one reason or another are not competent to tender them or the documents are not in admissible forms

### iii. Exhibit

When competent witnesses have introduced the documents and an application has been made successfully to accept the documents into evidence, they are marked accordingly by the court. This process can also be achieved by parties agreeing to the documents at Scheduling and marking the agreed documents as Exhibits.

## FOUNDATIONS OF DOCUMENTARY EVIDENCE

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Just as testimony, a witness cannot tender a document unless the document fulfils various evidential rules. This requires that various backgrounds and foundations must be established to prove that a witness is competent to tender the documents and that the documents are admissible before the witness can be taken to specific documents.

Main elements of foundations that affect the credibility of documentary evidence include;

- Originality,
- Privilege (where a party is law allowed to decline providing evidence),
- Authenticity,
- Relevance,
- Hearsay,
- Evidential challenges with the document

The process of tendering the document into evidence is only necessary where documents have not been agreed to by the parties. However, a document being agreed to does not mean that their evidential evidence has been proved and or admitted too. Therefore, the foundation and relevance of documents must nevertheless be adequately and comprehensively covered even when documents are agreed to.

Where witness statements or affidavits are used, the statement must still demonstrate that;

- They are competent to tender the documents;
- The documents are authentic;
- Any evidential challenges of the documents are dealt with; and
- Their relevance is explained.

Pay attention to the form of questioning depending on the part of the Trial; documents tendered through examination in chief must be by use of open ended questions to avoid leading the witness while questions on cross examination may be by use of leading questions.

### “Dancing” with Documents

To control the hearing, an advocate must move with efficiency and confidence. Avoid the fumbling, gambling and abandoning control to guess work or “to whom it may concern”. One way to establish credibility when representing a client is by being organised and prepared. There is no better way to show this than how you handle your documents. Consider the documents your partner in a dance where you must be in sync with the documents and all your audience at every step of the “dance”.

## FOUNDATION FOR SPECIFIC DOCUMENTARY EXHIBITS

Apart from agreements, letters, receipts, reports, newspapers and other ordinary paper exhibits, there are exhibits which the law requires special foundation for. We shall cover some of them below;

### Pictures:

A photograph is more relevant when it fairly and accurately depicts a relevant scene at a relevant time. Therefore, the focus in analyzing foundation for photographic evidence is whether the relevant view seen by the witness is fairly and accurately depicted in the photograph. Where there is no witness that can testify as to whether the picture accurately shows what that witness saw, the admissibility of the photo is placed in doubt. How do we know the photo wasn't photo shopped, or is taken at a different place and time and even of entirely different event? When a witness has testified that a depiction is fair and accurate, the evidence gains credibility and the burden of proving any faults with the evidence shifts to the opponent, who must present evidence that the depiction is unfair itself, or has been presented or altered in some unfair way. This special foundation must therefore be led.

### Audio & Video Recordings:

Audio recordings have for long been used and admitted in evidence and are the commonest in our Ugandan jurisprudence. In order to submit sound recordings as evidence in court, it must be established that the audio recording is an authentic representation of the conversation it is said to record.

In addition to the above, the Justice Stephen Mubiru in Arua High Court Civil Appeal No. 0006 Of 2013 - Twaha Sebbi Olega Vs. Alidriga Adinan (reported on <https://ulii.org/>) held that the evidentiary value of a recording depends in large measure on who said what, but a court's ability to use that information depends upon two qualities of the recording: audibility and intelligibility. Audibility relates to whether the listener is able to hear what is on the recording. Intelligibility relates to whether the listener is able to understand what the conversants said. These two tests therefore require that audios fulfil Section 88 of the Civil Procedure Act which stipulates that English is the official language of Court and be translated if not in English. Therefore Audio recordings used in our jurisdiction commonly include a transcription of the contents and additionally, a translation of the transcription if not in English.

A video recording is in law regarded as a document and it has been decided by courts that there is no difference in principle between a tape recording and a photograph. See the above decision by Arua High Court Civil Appeal No. 0006 Of 2013 - Twaha Sebbi Olega Vs. Alidriga Adinan. He further guides that being a document, like any other document being offered in evidence, a recording must be authenticated: a witness must offer evidence establishing that the object is what that witness claims it is. He held that the basic process for foundation of admission of recordings or, on the opposition side, to deny admission of audio evidence requires that the following be shown;

1. It must be shown that the mechanical transcription device was capable of taking testimony.
2. It must be shown that the operator of the device was competent to operate the device.

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3. The authenticity and correctness of the recording must be established.
4. It must be shown that changes, additions, or deletions have not been made.
5. The manner of preservation of the record must be shown.
6. Speakers must be identified.
7. It must be shown that the testimony elicited was freely and voluntarily made, without any kind of duress.

The above process also applies when the audios are electronically obtained. This was discussed by Justice Margaret Mutonyi in Gulu Hct/02/Cv/Ep/0001/2014 Amongin Jane Francis Okili Vs. Lucy Akello & Another (reported on <https://ulii.org/>). She held that before accepting electronic evidence, a court will determine if the evidence is relevant, whether it is authentic, or hearsay, or whether a copy is acceptable or the original is required. Further that like any other evidence the proponent of electronic or digital evidence must lay the proper foundation which makes the evidence reliable. Courts are mainly concerned about reliability of such digital or electronic evidence. The foundation should include the following:

1. Reliability of the equipment used.
2. The manner in which the basic data was initially entered.
3. The measures taken to ensure the accuracy of data as entered.
4. The method of storing the data and precautions taken to prevent loss or alteration.
5. The reliability of the computer programs used to process the data.
6. And the measures taken to verify the accuracy of the program.
7. What software was used to preserve digital evidence in its original form and to authenticate it for admissibility?
8. The competence of the person who accessed the original data.
9. This person must be competent to do so and able to give evidence explaining the relevance and implication of what he did. And finally,
10. An independent third party should be able to examine the process and achieve the same results.

The test for authenticity was codified by the Electronic Transactions Act 2011. S.7 (2)(a) of the ETA provides that “for the purposes of subsection 1(a) (which talks of the original form) the authenticity of the data message shall be assessed (a) by considering whether the information has remained complete or unaltered except for addition of an endorsement and any change which arises in the normal communication.”



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Section 8 of the same Act then provides for the admissibility and evidential weight of electronic record. It provides that “ the authenticity of the electronic record system in which an electronic records system is recorded or stored shall in the absence of evidence to the contrary be where (a) there is evidence that supports a finding that at all material times, the computer system or other similar device was operating properly or if it was not, the fact of its not operating properly did not affect the integrity of the electronic record and there are no other reasonable grounds to doubt the integrity of the electronic records system. Electronic evidence that does not fulfill these tests is not admissible or if admitted is of no evidential value.

### Emails, Website Materials and Social Media Evidence

S.5 of the Uganda Electronic Transactions Act 2011 provides that information shall not be denied legal effect, validity or enforcement solely on the ground that it is wholly or partly in the form of data message. This provision has made Emails and other soft copy evidence admissible once printed. The same tests for authenticity apply. The decision of Justice Madrama in Commercial Court Civil Suit No 161 Of 2010 Dian Gf International Ltd Vs. Damco Logistics Uganda Limited & Another (reported on <https://ulii.org/>) expounds on the form and preservation emails must be accorded in order to be given full evidential weight as Exhibits.

The same applies to articles on the internet and social media evidence such as Facebook, Twitter, Instagram and the post of the like plus WhatsApp Messages.

### Points to note about the Tendering Process

- Most objections to documents being tendered arise from the lack of evidential foundations and therefore the remedy may be to lead the witness or call another witness to address the gaps.
- Documents that are identified are not part of the evidence and counsel tendering them must endeavour to address the objections upheld and re-apply for their admission as exhibits. Justice Mubiru in the Olega case above explained that identified items were not exhibits and they therefore did not form part of the body of evidence to be evaluated.
- Even where objections to documents are upheld or overruled, counsel may challenge such rulings on appeal and it would be up to such an advocate whether to challenge such a ruling right away or on appeal against the whole judgement.
- It is possible to tender a document through an opposite party's witness through cross examination only then the aspects discussed above are fulfilled with the usual cross examination techniques of controlling the witness by the use of leading questions when developing the required foundation.
- When documents are adduced by affidavit evidence or witness statements, the foundations discussed above must be fulfilled in the written testimony or evidence. Otherwise, the evidence attached is then not admissible or of any weight.

- Admission of evidence does not amount to conceding to the evidential value of it. Aspects of authenticity and other evidential rules can still be challenged in cross examination and or submissions and the evidence found wanting expunged from records or not relied on.

## **SAMPLE CHECKLIST FOR TENDERING EXHIBITS DURING EXAMINATION IN CHIEF**

A checklist of the process of tendering evidence which a party wishes to rely on but the opposite party disagrees or disputes. The same applies when such evidence is attached to affidavits or written testimony.

1. Ask the witness question(s) that establish that he is competent a right witness.
2. Ask the witness question(s) that establish the existence of the exhibit.
3. Ask the witness question(s) that establish sufficient foundation that the witness is able to identify the exhibit.
4. Ask the witness question that how they would be witness be able to identify the exhibit? E.g. “If I showed the question, how would you be able to identify it?”. (Have the witness identify the document in several ways.)
  - Date the document was authored.
  - Who authored the document?
  - Who has custody of the document?
  - Who signed the document?
  - What other features identify the document such as;
    - Contents
    - Features
    - Letterhead
    - ID number
    - Handwriting
5. Make an application to the judge to approach and show the witness the exhibit.
  - Request that the witness examine the exhibit.
  - Have the witness identify the exhibit; e.g. “What are you holding?”
6. Ask questions to have the witness reconfirm the earlier features they relied on to identify the exhibit. It may seem like a repetition, but it is not. The first set of identification questions in Step 4 is to demonstrate that the

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witness is familiar with a document before they see it. While the second set of questions in this Step 6 is to confirm that this is the document they were referring to earlier. The aspects asked are to describe the document now that it is in the witness' hands. E.g.; If the exhibit is a letter;

7. If necessary, establish any additional foundation to tender the exhibit, for example;

- Originality
- Relevance
- Authentication
- Hearsay Analysis
- Accuracy; etc....

8. Provide opposing counsel with a copy of the exhibit or establish for the record that counsel already has a copy, also provide judge with a copy or request the Judge and opposite counsel to turn to a particular page of the trial bundle containing the exhibit.

9. Apply to the Judge to have the exhibit marked and tendered into evidence.

10. Respond to any objections made by opposing counsel regarding the exhibit and wait for a ruling on the objections.

11. If the objections are over-ruled, wait for the exhibit to be marked by the Judge and given an exhibit number.

12. After it is marked, use the exhibit and its content persuasively.

Further Reading / Demonstration.

- Relevant Sections of applicable laws such as;
  - ✓ Evidence Act (Cap 5)
  - ✓ Civil Procedure Act (Cap 71)
  - ✓ The Electronic Transactions Act of 2011
  - ✓ The Electronic Signatures Act of 2011
  - ✓ The Civil Procedure (Amendment) Rules S.I. No. 33 of 2019
- Relevant sections of Modern Trial Advocacy – Steven Lambert
- Relevant Sections of Civil and Criminal Bench Books.
- All Case mentioned in the above notes.

## **CROSS EXAMINATION & IMPEACHMENT INTRODUCTION & LEGAL BASIS**

Cross examination is the process for testing the veracity and accuracy of the testimony of a witness. It is perceived as the riskiest part of the trial. Usually viewed as a contest between the lawyer and witness by the fact finder, poor cross examination can end up adding weight or attracting sympathy to your opponent's case. The legal basis/justification for cross examination can be found in the Evidence Act and Precedents.

Section 137 (1) of the Evidence Act provides for the order of examination as follows; that witnesses shall be first examined-in-chief, then (if the adverse party so desires) cross-examined, then (if the party calling them so desires) re-examined Case Law also on the other hand emphasizes the duty to cross-examine. Every cross-examination must comply with an important rule of practice. The rule is that you must cross-examine on every material fact in dispute. This rule is derived from the decision in *Browne v Dunn* (1893) 6 R. 67, H.L cited with approval in our *John Kayibanda v Uganda* [1976] H.C.B 253.

It was held that evidence that is not challenged in cross-examination by the party against whom it has been adduced is generally accepted by court as true unless it is contradicted by other evidence. Cross-examination is the symbol of adversary justice systems, a constitutional right in criminal cases and an aspect of due process in civil cases.

### **AIMS OF CROSS EXAMINATION**

Section 145 of the Evidence Act provides for lawful questions in cross-examination as follows;

When a witness is cross-examined, he or she may, in addition to the questions hereinbefore referred to, be asked any questions which tend—

- a) to test his or her veracity;
- b) to discover who he or she is and what is his or her position in life; or
- c) to shake his or her credit, by injuring his or her character, although the answer to those questions might tend directly or indirectly to incriminate him or her, or might expose or tend directly or indirectly to expose him or her to a penalty or forfeiture.

Cross examination provides an opportunity to highlight inaccuracies in, and generally discredit, the testimony of an adverse witness.

- To destroy the material parts of the evidence in chief.
- To weaken the evidence in chief, where it cannot be destroyed.

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- To elicit new evidence helpful to the party cross examining.
- To undermine the witness or shake his credibility.

Apart from the above, the primary aim of cross examination is to tell your story through the witness and not only to discredit the witness. Therefore, during cross examination, you the lawyer, are the witness.

### THE DECISION TO CROSS-EXAMINE

Note the emphasis in Section 137 above that a witness is cross examined if the adverse party so desires. Where it is impossible to achieve any of the above aims, do not cross examine. The Lawyer must look and listen to determine if the evidence to challenged has any of the following characteristics;

- Contradicts prior testimony of the witness;
- Conflicts with the testimony of other witnesses;
- Conflicts with documentary evidence;
- A hesitant, nervous or uncertain response on a key point;
- Addition or omission of facts on an important issue; and
- An actual admission
- Be alert to the contradictions, inconsistencies, hesitation, exaggeration, unresponsiveness and parroted or selective answers.
- Do I really need to ask this witness any questions, or can I save it for another witness?
- Has this witness hurt my case? If yes, where exactly? –
- Can this witness really help me? Where?
- Can I really reverse or weaken the harm caused by this or some other witness by questioning this witness?
- Is this witness basically honest? -Is this witness knowledgeable?
- Is this witness vulnerable? Where exactly?
- Know When Not to Stand Up at All. Don't if testimony is:- not damaging, not germane to any important issue, is indeed devastating but you have no weapons of mass impeachment

### THE CONTENT OF CROSS-EXAMINATION

Section 137(2) of the Evidence Act, provides the cross-examination need not be confined to the facts to which the witness testified on his or her examination-in-chief. Despite this allowance for wide-open cross-examination, questions must nevertheless concern relevant issues in the case.

Hence the wording of Section 147 above on “lawful questions” during cross examination which by implication alludes to the fact that some questions may not be allowed. This wide-open approach to cross is mainly in English Law and other jurisdictions insist on very narrow room for cross examination. Cross examination therefore has rules and ethical restraints which we shall cover in the end.

## PREPARATION FOR CROSS-EXAMINATION

To prepare for cross examination, the lawyer should;

- Have thorough knowledge of one’s own case
- Effective anticipation of the adversary’s case
- Familiarity with the witness’ testimony.
- Gathered from witness statements
- Gathered from affidavits
- Meticulous notes from attentive listening during trial
- Investigation of the case, the facts, the pleadings, the evidence and the law.
- Prepare a thorough outline of the objectives and areas to be covered
- Develop credibility and trust with court

To accomplish the above, consider the following preparation tools;

Writing down all the questions

Write down all the questions so that you sharpen your specific questions. This helps in getting the correct form of the question right as well as with brevity (concise and exact use of words in writing or speech). When it comes to the actual examination, do not read from the list as that takes away from the chance for eye contact.

Outlines

Use notes not in the form of written questions mentioned above but an outline to remind yourself of the points that you intend to make on cross-examination and to ensure that you do not inadvertently omit anything. Here is an example of an outline in a Fire Truck Accident case;

Background

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### i. Business consultant

- Sole proprietor
- Clients are important
- Timeliness and efficiency

### ii. Locations and distances

- His home
- His office Parking lot

### Accident

#### i. Plans for day

- Left home at 7:55 a.m.
- Meeting at 8:30 a.m.

#### ii. Weather

#### iii. Fire truck

- Didn't see
- Didn't hear
- Didn't stop

### Post-accident

#### i. Phoned office/important client

#### ii. Didn't call ambulance for plaintiff

An outline like this is very easy to follow, organized to tell the story and to provide a visual pattern that allows you to keep your place. Even when you lose your place, the sparsity of words makes recovery that much simpler.

### Referencing your outlines

Lastly, reference your outline with the sources of the information for the points you want to make. This will help you refresh a witness' memory or know exactly where to find the basis of your information. These are usually previous statements, contracts and documents and other records that inform the lawyer on what answer to expect.

## TECHNIQUES OF CROSS-EXAMINATION

There is no one correct method of cross-examination. A lawyer can use different techniques for different witnesses. However, to tell your client's story through an adverse witness, the essential goal of cross-examination, the technique is witness control. The best way to control a witness is through;

a) Use of leading questions

Section 140 of the Evidence Act defines a Leading Question as one that suggests an answer. And Section 142 of the Evidence Act specifically allows the use of leading questions in cross examination. A non-leading question invites the witness to wander away from your story.

b) Use of Short Questions

If a question contains more than a single fact or implication, it is not short. Divide it. If a question is more than ten words long, it is not short in execution. Try to shorten it.

c) Ask enough questions to develop a topic

This topic is normally taken from the outline guiding the lawyer.

d) Avoid Ultimate Questions

It will often be tempting to confront an adverse witness with one last conclusory question: "So you just ignored the fire truck, didn't you?" Resist this temptation. It may unravel all the work you may have accomplished. Instead, save that conclusion for your final submissions at the end of the trial. Another common mistake is for the lawyer to attempt to make that argument there and then such as "May the Court please note that the witness has admitted ignoring the truck....." This is not the place for an argument or submissions.

e) Listen to the Witness and Insist on an Answer

There are many reasons why a witness can refuse to answer a question on cross examination which is mainly refusal to agree with a lawyer or being evasive or elusive. The lawyer must insist on an answer and this requires that they would have to pay attention and listen to the answer.

f) Questions that lose control.

The most common reason why a witness may refuse to answer a question or agree to the answer suggested by the lawyer is because the lawyer would have lost control of the witness. This is usually because of the form of question such as the following;

• Non-leading Questions; The cardinal rule on cross-examination is to use leading questions. You can control a witness this way:

Q. You were thirty feet away from plaintiff's car when you first applied your brakes, correct? But you lose control when you ask:



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Q: How far from the plaintiff's car were you when you applied your brakes?

- "Why" or Explanation Questions; Asking a witness to explain is the equivalent of saying, "I've grown tired of controlling this cross-examination. Why don't you take over for a while?"
- Fishing Questions. Fishing questions are the ones that you ask in the hope that you might catch something. Do not ask questions to which you do not know the answers.
- Long Questions; These multiply a witness's opportunity to find something to disagree with and the lawyer will not know what exactly the witness disagrees with. The more words you use, the more chance there is that a witness will refuse to adopt them all.

g) Questions to Avoid;

- I put it to you (that you crossed the road);
- I suggest to you (that you crossed the road);
- My client will say (that you crossed the road);
- Are you trying to persuade the magistrate/judge/jury (that you crossed the road)?

None of these is a proper question, even if you add at the end: "What do you say to that?"

Although you may have heard these questions used so many times, you should never use them.

Never. One judge described such a question as "ineffectual". Not only is it ineffectual, the question does not address an issue in the case.

## CROSS-EXAMINATION STRATEGY

It is important to have a strategy for your cross examination. Such as one following this order;

- Friendly information; be friendly and portray a kind demeanour first. It may be cross examination, but you don't have to be cross. This is usually achieved through collection or confirmation of background information.
- Affirmative Information; After exhausting the friendly information, ask questions that build up the value of your case rather than tear down the opposition's.
- Incontrovertible Information: You can now proceed to inquire about facts that damage the opposition's case or detract from the witness's testimony, so long as they are well-settled or documentable. On these questions a witness may be inclined to hedge or quibble, but you can minimize this possibility by sticking to the sort of information that ultimately must be conceded.
- Challenging Information; It is unlikely that a witness will cooperate with you once you begin challenging her memory, perception, accuracy, conduct, or other aspects of her testimony. Therefore, it is usually desirable to

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proceed through friendly, affirmative, and uncontroverted information before you begin to take sharper issue with the witness.

- Hostile Information; Hostile information involves confronting the witness directly. You may be able to extract the necessary answers to hostile questions, but certainly you can eliminate all hope of cooperation both then and thereafter. Hostile questions involve assaults on the witness's honesty, probity, peacefulness, character, or background. "Didn't you spend time in prison?" "You never intended to live up to the contract?" "That was a lie, wasn't it?"

Because of the above progression, control of a witness is paramount. Pick your first points carefully. Start with easy scores and save the difficult points for later. This ensures that you are efficient and able to add something helpful or of importance that creates a good first impression on the Judicial Officer. In order to do so, you must throw out the weak, medium and unnecessary points that will not bear any fruit. When it is necessary to deal with challenging or hostile information, avoid the temptation to "pull the trigger" in cross examination. That is asking the conclusions. This will give the witness and his lawyer the "chance to clean up their testimony". Save the conclusions for submissions.

### HALLMARKS OF GOOD CROSS EXAMINATION

- It Must Be Absolutely Admissible
- It Should Be Central to Your Theory
- It Should Evoke Your Theme
- It Must Be Undeniable
- It Must Be Stated with Conviction

### THE ETHICS OF CROSS EXAMINATION

- Questions that mislead, confuse or are designed to induce determination by bias, or other prejudgment outside the evidence, baseless stereotype or prejudice external to the evidence.
- Questions are improper if unduly annoying, harassing, intimidating, offensive, oppressive, humiliating, and repetitive or in tone or manner that is belittling, insulting.
- Don't ridicule or be sarcastic or discourteous with the witness unless you are positive that the witness' credibility has already been totally destroyed before the court; *Uganda v Festo Baze and Another* [1972] H.C.B. 222.
- Avoid the expression of personal animosity toward opposing counsel and witnesses regardless of personal opinion.

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- Avoid obstructive tactics, including: bringing frivolous objections, unfounded objections intended only to disrupt opposing counsel.
- Don't attempt to proceed in a manner previously barred by the court.
- Don't ask improper questions.
- Don't attempt to introduce inadmissible evidence.
- Don't use dilatory actions or tactics, create prejudicial or inflammatory argument or publicity.

### IMPEACHING A WITNESS

While the general cross examination of witness deals with the weakness of the opponent side's case, impeachment dwells on the credibility of a specific witness.

Section 154 of the Evidence Act provides for various ways the credit of a witness may be impeached by the adverse party.

The general areas that can be covered therefore include;

- Lack of or deficient personal knowledge.
- Lack of reliability.
- A witness with selective memory or deliberate omission of information not in their favour.
- Show bias / interest / motive / personal interest / character / omissions etc
- Prior inconsistencies such as behaviour and statements.

Impeachment in cross-examination is very effective on strong points; it will probably antagonize the court on minor matters. An unsuccessful impeachment impeaches the lawyer! Never attempt to impeach a witness unless you are sure of success.

#### Further Reading

Please read the Chapters on cross examination of the various materials provided.

#### Demonstration Resources

1. The following YouTube Videos also demonstrate techniques in witness control and focused lines of questioning that accomplish specific conclusions;

- [https://www.youtube.com/watch?v=bHd\\_UlebyoM](https://www.youtube.com/watch?v=bHd_UlebyoM) - Complete exchange between Sen.

Kamala Harris and Attorney General William Barr

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- <https://www.youtube.com/watch?v=eV0n7vYbwIk> - Rep. Al Green Questions HUD Secretary Ben Carson
- <https://www.youtube.com/watch?v=7rcVtBcvCTo> - Oscar Pistorius appears to change defence under cross examination
- <https://www.youtube.com/watch?v=7ZFO2KBdqIU> – University of Windsor Faculty of Law Cross Examination Training Video 5B
- <https://www.youtube.com/watch?v=ocRkn35deA4> – University of Windsor Faculty of Law Cross Examination Training Video 6

## **TRIAL OBJECTIONS**

### **INTRODUCTION**

A legally-driven attempt to prevent the admission of evidence (typically) or argument (sometimes) on the basis that the impugned evidence violates some aspect of the law of evidence or the rules of procedure.” Igor Ellyn, QC, CS, FCI Arb. & Belinda E. Schubert How to Make In-Trial Objections Less Objectionable, (2011).

Objections are the means by which evidentiary disputes are raised and resolved. Objections may be made to an attorney’s questions, to a witness’s testimony, to the introduction or use of exhibits, to a lawyer’s demeanour or behaviour, and even to the conduct of the judge.

### **THE PURPOSE OF OBJECTIONS**

- To keep testimony fair and honest.
- Controlling information getting onto the court record
- Preventing inadmissible evidence
- Preserving the record for proposes of appeal
- Provide the court with an opportunity to rectify erroneous rulings
- To protect your witness
- To ensure proper questioning
- To eliminate waste of time

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- To gain tactical advantage
- Provide a witness more time to think
- Break up the testimony of an opposing witness

### EXAMPLES OF POSSIBLE OBJECTIONS

- a) Objections to the form of questions; Leading questions, compound questions, argumentative questions, questions previously asked and answered, repetitive questions, questions calling for narrative answers, ambiguous or unintelligible
- b) Objections as nature of evidence; Irrelevant, immaterial, hearsay, lack of personal knowledge, assuming facts not in evidence, etc. As well as Objections to Exhibits being tendered; Admissibility, lack of foundation, not authenticated, improper copy, etc.
- c) Improper conduct of counsel or court

### PREPARING FOR OBJECTIONS

- Preparation and anticipation
- Keen knowledge and understanding of substantive as well as procedural law
- Anticipate the testimony of each witness
- Anticipate all documents and exhibits.

### THE DECISION TO OBJECT

- Failure to make a timely objection might be construed as a waiver on appeal. Francis Masaba v. Uganda[1992-93] H.C.B. 17
- A trial is not an evidence class: it's a battle for credibility.
- Object strategically (only if;-)
  - There is a legal basis
  - The proffered testimony or exhibit will be detrimental to your case.
- Testimony and evidence that both hurts your case and is objectionable.
- Judge / Magistrate may view you as obstinate or obstructive.
- Judge / Magistrate may think you are incompetent.

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- Question is readily fixable.
  - Allows opposing counsel the opportunity to explain the value of the evidence objected to.
  - Focuses the presiding judicial officer's attention on the impugned evidence.
- There will be times in a trial when an objection may have merit in law but be harmful tactically.

### FACTORS TO CONSIDER

- Will the evidence I hope to keep out hurt my client's case if it is admitted?
- Is the evidence I hope to keep out relevant to the case?
- Which rule of evidence does the impugned evidence offend?
- Is the evidence or tactic my opponent is using unfairly ambushing my client?
- If I object, will the presiding judicial officer think I am interfering unfairly?
- Can I rely on the presiding judicial officer to know that this evidence is not relevant??
- Will the evidence I hope to keep out hurt my client's case if it is admitted?
- Is the evidence I hope to keep out relevant to the case?
- Which rule of evidence does the impugned evidence offend?
- Is the evidence or tactic my opponent is using unfairly ambushing my client?
- If I object, will the presiding judicial officer think I am interfering unfairly?
- Can I rely on the presiding judicial officer to know that this evidence is not relevant??
- Will the presiding judicial officer think there is something to hide?
- How should one make the objection?
- What if the objection is not sustained?
- Should I hold my objection because I have evidence which I may be unable to call if the objection is accepted?
- Is the presiding judicial officer even paying close enough attention that he or she understands the significance of the question?
- What exactly will the witness say in response to counsel's question if there is no objection?

## THE TIMING OF OBJECTIONS

- As the grounds for objecting become apparent
- ✓ The legal basis for the objection
- ✓ Sufficiency of the factual basis
- Don't interrupt the question posed by the opposing counsel
- But don't wait until the answer is on the record before objecting
- If the grounds for doing so become apparent only after the answer is given, move court to strike the offending portion off the record.

## MAKING THE OBJECTION

Note: If there is one essential rule in arguing objections, it is that counsel should not argue with, or even address, each other. It is the judge who will make the ruling, and the judge who must be convinced. It is ineffective, distracting, and even insulting to the court when counsel turn to each other to argue their objections:

- Quickly rise and, as you stand, announce to the court, "Objection, your honour / your Lordship."
- Court will usually acknowledge you and invite your comments
- If counsel opposite remains standing, you may wish to add, politely, "Your Honour, I will give counsel a moment to be seated before I specify the grounds of my objection".
- State your objection clearly, simply and directly.
- Wait for a response from the Judge / Magistrate.

## RESPONDING TO AN OBJECTION

- Don't be resentful. See it as an opportunity for you to rephrase questions better.
- Concede. (If the objection has merit).
- Rephrase the question.
- Withdraw the question or comment that is the subject of an objection.
- Argue on basis of limited admissibility e.g. evidence tendered only for identification.
- Direct response.–Answer the objection with the law supporting the question or submission

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- Receive a ruling, favourable or unfavourable, with professional courtesy and dignity.

Important to Note:

- Be certain actually to obtain a ruling on every objection. If none is given, politely insist on one. E.g.

“Your Honour may we please have a ruling on the objection raised.”

- The role of each counsel after a ruling on an objection; the party against whom the objection is made must make sure the evidence nevertheless makes it to the record while the party who raises the objection must make sure the offending evidence is not brought onto the record another way.

### ETHICAL AND CONDUCT ISSUES

- Ethical issues frequently arise in the context of making and meeting objections. Because the objecting process is one of the most confrontational aspects of the trial, it often tests counsel's reserves of good will, civility, restraint, and sense of fair play. The three most common problems are discussed below.
- Don't use it only as a tactical device to interrupt an opponent's examination, cross-examination, argument or opposing counsel's concentration.
- Not to be used, to make opposing counsel look bad or to exhibit your superior knowledge of the law of evidence.
- Act politely and civilly at all times.
- When opposing counsel has an objection: stop your examination, be seated, and permit opposing counsel to make the objection.
- Don't bicker with your opponent.
- Don't be rude.

### OPENING STATEMENTS

#### INTRODUCTION

Opening statements introduce the Court to the parties' competing theories of the case. Opening statements generally are fairly short and focused on the key facts each party will present. They are told in chronological order, as much like a story as possible. They help the Court understand the nature of the dispute, focus on the key evidence, and place witnesses and exhibits in their proper context. Our laws provide for opening statements in both criminal and civil cases as follows;



## LEGAL BASIS

Opening Statements in M.C.A. Section 131 (1):

Opening and close of case for prosecution Criminal Cases before and defence

The prosecutor and the accused person shall be entitled to address the court at the commencement of their respective cases.

Opening Statements in Section 71. Opening of case for the prosecution.

When the assessors have been chosen, the advocate for the prosecution

The High Court

In the High Court, the Prosecution shall open the case against the accused person and shall call witnesses T.I.A and adduce evidence in support of the indictment.

Section 74 (1) Defence:

The accused person or his or her advocate may then open his or her case, stating the facts or law on which he or she intends to rely, and making such comments as he or she thinks necessary on the evidence for the prosecution; and the accused person may then give evidence on his or her own behalf or make an unsworn statement, and he or she or his or her advocate may examine his or her witnesses, if any, and after their cross examination and re-examination, if any, may sum up his or her case.

Opening Statements in Rule 2 – On the day fixed for the hearing of the suit, or on any other day Civil Cases – C.P.R to which the hearing is adjourned, the party having the right to begin shall state his or her case and produce his or her evidence in support of the issues which he or she is bound to prove.

Order 18 Rule 3 – The other party shall then state his or her case and produce his or her evidence and may then address the court generally on the whole case.

## PURPOSES OF AN OPENING STATEMENT

Courts in Uganda do not treat opening statements as mandatory, mainly due to time constraints and lack of an established practice for doing so. As well as due to the lack of Advocates' skill in presenting opening statements. However, since the law allows for them in both criminal and civil cases, an advocate needs to prepare to make an opening statement, for the following reasons;

- It helps the advocate to formulate and be in position to present a clear picture of the case; its major events, participants, instrumentalities, disputes and contentions.

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- It helps the advocate to plan an approach that will arouse the interest of the Court in his or her case and general theory so that the Court remains alert to the evidence. If the Court becomes bored (or worse, if it becomes antagonistic), it may be inattentive while the advocate presents his or her witnesses.
- It helps the advocate to plan an approach that will build rapport with the court, addressing the court in a way that communicates the advocate's sincere belief in his or her cause.
- For the defence, the opening statement presents the opportunity to keep the court reminded that there will be or are two sides to the case so that the Court does not make up its mind too soon.
- It provides the first opportunity to package and present one's case as a cohesive whole
- In this context, preparing one's case as if one will be required to make an opening statement helps the advocate in planning a strategy that will direct the attention of the court to the nuances of the proposed evidence in such a way as to make the usual piecemeal presentation of testimony more understandable as it is received.

### THE NATURE AND CONTENT OF AN OPENING STATEMENT

Proper opening statements are not arguments. Opening statements are supposed to be limited to informing the court of the facts the advocate intends to prove. It is not an opportunity to tell the Court that you have the evidence on your side, but to show / demonstrate it. The purpose of an opening statement is to inform the court in a general way of the nature of one's case so that it will be better prepared to understand the evidence. The advocate is supposed to limit himself or herself to a discussion of the anticipated evidence and what the main issues are.

The advocate may not argue about how to resolve conflicts in the evidence, nor discuss how to apply the law to the facts, nor attempt to arouse the emotions of the court. To avoid turning into a witness when giving this evidence, phrases "The evidence will show", "We shall call Mr. Mukasa who will testify that ....." or such similar phrases in the future tense may be adopted by an Advocate when introducing facts that will be testified on by witnesses.

### THE PROHIBITION AGAINST ARGUMENT

The most basic rule of opening statements is that "argument" is prohibited. There are two tests; -

- i) whenever an advocate makes a statement, which is of nature that a witness could take the stand and make the same statement, it is not argument. However, if the rules of evidence would prevent such testimony, or if no such witness exists, the remarks are argumentative.
- ii) If it is something the advocate intends to prove, it is not argument. If however the advocate makes a statement that is not susceptible of proof, it is argument. As long as opening remarks will assist the court in understanding the evidence, they are permissible. However, when they turn distinctly partisan asking

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the court to resolve disputes, make inferences, or interpret facts favourably to the speaker, the remarks are argumentative. For example, an advocate cannot refer to his or her witnesses as “good and truthful”, discuss how the evidence will satisfy a legal standard, make negative judgements about the adversary or refer to the other party in scurrilous terms.

### **THE PROHIBITION AGAINST EXAGGERATION AND MISSTATEMENTS**

The advocate is expected to make a full and fair statement of the party’s case and the facts the party intends to prove. The most basic rule is that an advocate may not misstate or exaggerate one’s evidence. The advocate cannot promise evidence he or she cannot deliver.

An advocate should not use colourful labels that characterise facts in a way distinctly favourable to one’s side. For example, the prosecutor cannot characterise a crime as a “rampage of terror” or “unspeakable evil”.

### **LIMITED OR NO DISCUSSION OF THE LAW**

It may contain a brief statement of the main legal issues on which the case depends, but not a detailed discussion of the law. One should not go further and argue how the law is supposed to be interpreted. In the same vein, pleadings may be referred to only if doing so will explain the procedural posture of the case, clarify the factual contentions, or help identify which issues are contested and which have been admitted

### **DISCUSSION OF THE FACTS**

Opening statements are supposed to be limited to summaries of the basic facts one intends to prove. Three rules follow from this:

- i) one may not misstate, overstate or exaggerate the evidence.

The most common mistake in an opening statement is overstatement: An advocate can make no greater mistake in an opening statement than deliberately or carelessly to overstate his or her case. The deliberate inclusion of matters which cannot be established by admissible evidence. Overstatement takes several common forms: - discussing the opponent’s case, discussing evidence of doubtful admissibility and discussing the testimony of uncertain witnesses, where one doubts about exactly what a witness will say, or even if the witness will show up at all.

- ii) one may not refer to inadmissible evidence, and

- iii) one may not discuss evidence one expects the opponent to introduce that will not be part of one’s own case. An advocate may not refer in an opening statement to evidence that would be inadmissible at trial. An advocate may refer to any evidence that he or she has reason to believe is admissible and intends to offer. An advocate may not anticipate the opponent’s defences nor talk about the facts the opponent intends to prove and how he or she will rebut them, except if the party represented plans to offer the evidence. This is because in that situation,

one lacks a good-faith basis that the statements will be supported by testimony, since one not have control over whether the opponent will call a particular witness or elicit testimony on a particular defence.

### **Exhibits;**

An advocate may be permitted to use exhibits during opening statement. Exhibits that the advocate reasonably believes will be introduced during the trial logically are evidence just like witness testimony, and should be allowed to be disclosed them to the court. Exhibits that will be offered during trial, such as weapons, autopsy photographs, and bloody clothing may be permitted at court's discretion.

### **OTHER OBJECTIONABLE CONTENT OF AN OPENING STATEMENT**

Making emotional appeals for sympathy for one's own client, or antipathy toward the adverse party. Although an advocate can discuss facts that have emotional content, such as the extent of a plaintiff's injuries, one cannot go outside the relevant evidence. For example, a plaintiff's advocate in a personal injury case may discuss how the plaintiff has suffered because there is a claim for compensation for pain and suffering. The advocate though may not discuss how hard it has been on the plaintiff's family. Appealing to racial, ethnic or other cultural prejudices. This is usually done by linking one of the parties to a disfavoured group, e.g., suggesting that the accused is a member of a street gang. Discussing wealth, poverty, insurance, or anything else connected to a party's ability to pay damages, e.g., that the defendant was not a large corporation, but a small family - owned business. Personal attacks on the opposing advocate, e.g., that defence counsel would try to confuse the Court. Referring to other similar cases or one's own experience, e.g., informing the court that the defendant had previously lost a similar negligence case.

### **STRUCTURE OF OPENING STATEMENTS**

#### Introductory remarks

An advocate usually begins an opening statement by introducing himself / herself and the client(s), and conveying the purpose of the opening statement. One will frequently use an analogy to explain what an opening statement is, such as, "an opening statement is like the cover of a jigsaw puzzle box that previews what the finished puzzle will look like." They also commonly include the disclaimer that what is said in opening statement is not evidence.

#### Present the Central theme

A good presentation of an opening statement needs a central theme. Themes can be found in the elements of your case or in the characteristics of your client that arouse natural sympathy or coincide with universally admired principles. Themes should be positive, reflecting the strengths of one's case. In general, one should stay away from "negative" themes which focus on a weakness in the adversary's case. Negative themes may seem petty. For example, if one represents an accused in a criminal case where the victim's identification is shaky and the police did a poor investigation, one may be tempted to focus on the weaknesses of the State's case with the

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theme “the blind leading the blind.” However, if the accused has a plausible alibi, one is probably better off with a less clever, but more positive theme, such as “You can’t be in two places at once.”

A summary of the case told as a story

The body of the opening statement is the client’s version of the story of what happened. It is a narrative of the facts from the client’s point of view. One should bear in mind that this is an introduction. It must be simple rather than complicated, and focus on the important facts rather than the peripheral details.

One must bear in mind also that one is recreating an event that happened a number of months or years ago. The focus is on the past event; who did what to whom, what were their reasons, and what was the consequence. The focus is not on the trial to come. It does not matter how one will prove the facts, but focus on the facts themselves.

A straightforward, chronological order is the safest, easiest, and most natural way to tell a story. A chronology is not just a recitation of facts. The advocate’s main task is to paint a vivid mental picture of what happened. The words one uses and images one creates should be chosen not only for their technical accuracy, but also for the effect they will have on the mind of the Court. If the advocate can create effective images that the Court will understand and remember; they will bring the story to life. This is especially important for conveying an accurate picture of emotions, pain, or a complex series of events difficult to describe in simple words.

Remarks that summarise the nature of the case, state the advocate’s theme of the case, and arouse the interest of the Court, e.g.: -

*“On 12th July, 2015, John Mugabi walked into Bukasa New Health Clinic through the front door to have a minor operation to remove a growth on his arm. One week later, 19th July, he was carried out of the back door, dead. What happened in that short week to turn a routine operation into a life and death struggle, and why it never should have happened, is what this case is all about.”*

### **INTRODUCTION OF ACTORS, PLACES AND INSTRUMENTALITIES**

The advocate should then introduce his or her client and other important witnesses and set the scene. By giving this background information first, the advocate does not have to interrupt the summary of events to explain who certain people are or to describe a location or instrumentality. The advocate should devote considerable thought to what he or she will say about his or her client that personalises and humanises him or her, and makes the court sympathetic toward the client at this stage.

The purpose of opening statement is to describe the incident, not to describe the upcoming trial. Therefore, the advocate should introduce the Court to the people who actually played out the crime or other event, not the witnesses who will later describe it. In doing so, the advocate should bear in mind that the role they played is important to the Court’s understanding of who they are.

Compare the following two examples:

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- i) Another important witness will be Mukasa Kalema. Mr. Kalema is married, lives here in Nakawa, and works at the National Water and Sewerage Corporation Office in Bugolobi. He will describe what happened at the scene of the accident.
- ii) Another important person is Mukasa Kalema. Mr. Kalema was driving the National Water and Sewerage Corporation Pick-up truck which was smashed in the back by Kagoro's truck.

The first tells the Court nothing that is important about the case; the second introduces the Court to one of the critical people involved, the man who caused the wreck. The Court also will be better able to understand the events if they know the goals and motives of the participants, and any obvious factors affecting credibility. The advocate should add any of this additional information only if he or she can do so briefly. For example;

“Another important person is Mukasa Kalema. Mr. Kalema was driving the National Water and Sewerage Corporation Pick-up truck, trying to reach quickly at the Jinja Road Roundabout, where a broken heavy duty water pipe had caused a serious traffic jam, when his car was smashed by Kagoro's truck.”

The advocate should familiarise the court with the important locations, times, and instrumentalities involved. The same kinds of considerations apply. One's goal should be not just to mention them, but to make them real to the Court. Locations can be pictured from the perspective of the client or eyewitness; instrumentalities and machines can be made to appear as complicated devices, difficult to control, or as simple extensions of the will of the operator; and times can be related in terms of memorable events such as holidays or mealtimes. For example:

“Let me set the scene for you: It is 7:45 on Monday morning. People are driving to from home to their offices. Mukasa Kalema gets into this Pick-up truck [holding up a photo] and drives to the Jinja Road Roundabout [displaying diagram of the scene]. This is where the accident happened.”

### **IDENTIFICATION OF THE DISPUTES**

It is helpful to describe the main factual disputes between the parties in an opening statement. It is usually acceptable to mention the points of contention in order to help the Court focus on the real disputes, but not to start arguing about how they should be resolved. For example; -

We are claiming that Kagoro's injuries were caused by the defendant. We will offer evidence to show that the defendant was did not check his rear mirror before joining the road when he colluded with Kagoro's boda boda seriously injuring him and sending him to the hospital. In the pleadings filed before trial, the defendant asserted that he was driving safely and is therefore not responsible for Kagoro's injuries. Thus, you will have to decide one central question — was the defendant driving carelessly? That's the issue we will be focusing on.

Address the weaknesses

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Every case taken to trial will have some inherent weaknesses; gaps in the evidence, witnesses who lack credibility, the absence of corroboration on an important issue, unavailable witnesses, and so forth. Trial practitioners unanimously agree that weaknesses one's case should be disclosed in the opening statement. By bringing them out oneself in as positive a manner as possible, one takes some of the sting out of them, appears honest, and lessens the negative impact when the opponent points them out.

This does not mean one should tell the Court about every piece of conflicting evidence, every possible line of impeachment, or anticipate disputes the adversary may raise. These are not weaknesses in one's own case. Rather, one must bring out and explain away key weaknesses that will emerge from one's own presentation of evidence or that inhere in one's theory of the case, regardless of what the opponent does. For example, suppose that your client is accused of being at fault in an accident, and had just left a restaurant where he had consumed a couple of beers. This is a major problem that you must deal with but not overemphasize. One could say:-

*“At 9:00 pm, Kagoro left Kati Kati, and got into his car to head home. The car was in good condition, and Kagoro was alert and not tired. He had drunk two beers with his dinner, but was still in full control of his faculties. He would not have driven if he had been feeling any effects from the beer. Kagoro won't even drive with a cell phone on.”*

Conclusion and request for a decision

The conclusion should summarise the theme of one's case and ask the Court for a specific decision, but it cannot be argumentative. This is a difficult line to draw. It usually is permissible to suggest that the evidence adds up to a favourable verdict, as long as this is done simply and not at great length.

Ethics of Telling a Client's Story;

A Final word on telling a persuasive story is in the words of the Honourable Sir Malcom Hilbery in his book *Duty and Art in Advocacy*.

In the majority of cases, however, it is not in the seclusion of chambers that a man hopes to pass, or does pass his professional life. Rather, it is in the practice of advocacy in open Court. Here it is that he will find himself daily and hourly called upon to be obedient to the code. Here he must perform his two-fold duty, on the one hand his duty to his Client, and on the other his overriding duty to the court. For the Client, he must present the Client's story as attractively as it can be put. But it is the Client's case, not something of his own invention, which he must present. His duty is to make the best of the material with which he is provided.

The facts will be put before him in his instruction, and in the proofs of the witnesses. ....if he may inadvertently by design suggest to the witnesses what their evidence ought to be if the cause is to be won. The result may be that the Court is deceived and an injustice is done.

Further Reading;

All sections on Opening Statements from the Books in our General Reading List.

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### Opening statements videos

1. <https://www.youtube.com/watch?v=wO2WGJK5vPU> - Mock Trial Step-by-Step: Opening Statements
2. <https://www.youtube.com/watch?v=jNR5p0oeA90> - Prosecutor Linda Dunikoski Gives Opening Statement to Jury in Yung Vito Murder Trial
3. <https://www.youtube.com/watch?v=0wAIKy8GvYQ> - Extra: Prosecution's opening statement in Mueller murder trial
4. <https://www.youtube.com/watch?v=IzU2Zo37tpg> - Mueller defence attorney's opening statement
5. <https://www.youtube.com/watch?v=G6O51yZAOgA> - Examples of Persuasive Opening Statements Charles Ross
6. <https://www.youtube.com/watch?v=s9AwFbmLQ5Q> - Patti Mock Trial: Prosecution, Opening Statements
7. <https://www.youtube.com/watch?v=05uaOrBdtbE> - Mock Trial University: Opening Statement | How to Deliver an Opening Statement
8. <https://www.youtube.com/watch?v=9mfqzj9nOi8> - Part 3: Arbitration - Opening Statement from Employer

## FINAL SUBMISSIONS

### INTRODUCTION

Submissions are made in civil and criminal cases, civil and criminal applications, and preliminary objections. Generally, every time the Court needs to make a decision, Counsel will be given an opportunity to address the Court by making their arguments and those arguments are called submissions. (See: O.18 r 2 C.PR; S. 131 MCA; S. T.I.A; Rules 27 and 28 of the Court of appeal Rules; rules 27 and 28 of the Supreme Court Rules.) Final submissions take place after all the evidence has been presented.

Submissions are an important aspect of trial advocacy. A good case can be easily lost at the final submission stage just as a marginal case can still be won through final submissions.

## ORDER OF ADDRESSES

### Criminal Trials

In a criminal trial, after the close of the accused person's case, the accused person is entitled to address the court, and the prosecutor then is entitled to reply; but if the accused person adduces no evidence or no evidence other



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than evidence given by himself or herself, the accused person is, subject to section 112 and subsection (3) of the M.C.A, entitled to the right of reply (See section 131 (2) of the Magistrates Courts Act).

In trials before the High Court, if the accused person, or any one of several accused persons, adduces any evidence, the advocate for the prosecution is entitled to reply (See section 77 of the Trial on Indictments Act.)

### Civil Trials

As regards civil suits, counsel for the plaintiff will be the first to present the final submissions, the defendant's advocate will then present his or hers. After the defence has presented its final submission, the advocate for the plaintiff has the opportunity for a rebuttal submission.

### Purpose

Written or oral arguments to persuade a court or tribunal to decide a matter in your client's favour. They constitute an opportunity for each party to summarise the evidence, tie it together with the relevant law and key themes, in order to convince the court why his or her position should prevail. The goal is to establish a persuasive link between the facts of the case and the law.

## **STRUCTURING THE FINAL SUBMISSION.**

The process of formulating final submissions starts from the day the advocate first picks up the file, from the moments when the advocate first starts contemplating the case, and from the first time the advocate looks into the eyes of the client, prepares a theme, a theory and strategy. An advocate preparing for submissions though must be extremely flexible and must listen carefully during the trial. The advocate should take notes throughout the entire trial in order to refer only to evidence which has actually been admitted into trial. Albert Krieger said about final submissions that "its genesis is in the foresight, the imagination, the dexterity, and the wit of the lawyer. It is shaped from the clay of the first meeting with the client, formed with the preparation for trial, and fired in the kiln of the trial itself." (Albert Krieger is an American defence lawyer. He is a nationally recognized expert on cross examination. He was the recipient of the National Association of Criminal Defence Lawyers' 1995 Robert C. Heeney Memorial Award as well as their Lifetime Achievement Award in 1987).

The most important aspect of a good final submission is the ability to organise arguments and place them into a structure that allows for an effective presentation of those arguments. The arguments should be an organised, well reasoned presentation which emphasises the strengths of the client's case and addresses the flaws of the opponent's case.

Example of outline for structuring defence skeleton arguments in a criminal trial;

1. Start with a convincing statement that the accused did not commit the offence, (or did so but with a lower degree of culpability).
2. Lay out for the court what is at issue in the case (and maybe even what is not).

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3. Lay out the defence case theory [Reiterate your theory of the case].
4. Argue the law [Explain the law and show how the evidence satisfies all legal requirements for a decision in your favour]
  - i) The Presumption of Innocence
  - ii) The Burden of Proof
  - iii) Standard of Proof / Beyond a Reasonable Doubt.
  - iv) The elements / ingredients of the offence.
  - v) Other Case Specific legal principles, e.g. evidential ones.
5. Argue the Facts [in relation to each of the ingredients]. I
  - i) Facts in Evidence [Emphasize favourable evidence].
  - ii) Arguing facts that directly undermine evidence presented by the state.
  - iii) Arguing facts that affirmatively promote your case theory.
  - iv) Absence of Facts [Rebut opponent's allegations].
6. Attacking the Integrity of the Investigation
7. Conclusion [Suggest specific ways for the court to resolve the case].

Example of outline for structuring defence skeleton arguments in a civil trial;

1. Brief introduction i.e. what the matter is about
2. State the burden and standard of proof
3. Tackle each issue/ingredient/ground of the case/application
  - i. State the law on every point,
  - ii. Cite written law first,
  - iii. Then cases bear in mind which authorities are binding and which are persuasive
  - iv. Try to distinguish authorities cited by the other side
4. Apply the law to the facts as presented in the oral evidence or affidavits
  - i. Highlight the strength and credibility of your evidence e.g. corroboration, impressive demeanour of witnesses, withstanding cross examination etc.

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- ii. Contrast your evidence with the evidence of the opposite side on those points.
  - iii. Show the weaknesses
  - iv. Explain inconsistencies and contradictions in your evidence.
  - v. Show that they are minor.
  - vi. Highlight the major inconsistencies and contradictions in the other party's evidence.
5. Conclude by suggesting ways for the court to resolve the issue /ground in your favour.

### WHEN TO CONCEDE

- If the law and evidence are not in your client's favour, be prepared to concede
- You may abandon an application
- You may concede an application i.e. not oppose it
- You may advise a client to plead guilty
- You may advise the DPP to withdraw a case
- You may advise a plaintiff to withdraw a case or accept a settlement
- You may advise a defendant to concede liability and mitigate damages or accept a settlement
- Plea in mitigation/allocutus (See Uganda v Charles Eliba [1978] HCB 273) & the sentencing guidelines)
- Consider non-custodial sentences e.g caution, community service, fine

### HALLMARKS OF AN EFFECTIVE FINAL SUBMISSION

- In general, a good final submission has the following characteristics.
- It clearly tells the court what decision you want and why.
- It is logically based on the evidence.
- It is consistent with common sense.
- It accounts for all of the important evidence.
- It concentrates on the most important items of evidence.
- It avoids becoming bogged down in reviewing uncontested or trivial matters.

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- It explains both why you are right and why your opponent is wrong.
- It uses specific evidence and specific legal principles, not generalizations
- It appeals to the court's sense of fairness and justice

### STYLE OF PRESENTATION

Present the final submission in a style which one is comfortable with. Some advocates prefer a loud, strong style while others prefer a calm, persuasive presentation. It is important for the advocate to settle on a style that is comfortable and appropriate to the client's case.

The advocate should not read from a written text of the argument, though an outline or skeleton arguments may be helpful. Remember good argument is not just oratory; nor is oratory necessarily good argument. The goal is not to win an academy award for dramatic performance.

### WHAT TO AVOID DURING FINAL SUBMISSIONS

A good final submission must be passionate and heartfelt while avoiding the following pitfalls;

- Making or providing improper statements or citations of the law.
- Misstating the evidence. Stick to the record and do not give evidence from the Bar.
- Invite speculation about unproved facts.
- Stating personal beliefs.
- Suggest that the appellate courts will correct any mistakes the court makes.
- Improperly exciting prejudice, passion, or sympathy, e.g. by using inflammatory language.
- Avoid any derogatory remarks about opposing counsel or the opposing party.
- It is not a time to show off. If the advocate makes the submission about himself or herself and his or her achievements, by talking at the court instead of with it, by being condescending in voice and mannerisms, by telling the court what to do instead of showing it the way and letting it get there on its own, the court will be put off.
- Avoid lengthy final submissions, they can result in a number of undesirable consequences: your major point may become lost in a mass of trivial issues, the court may become bored and stop listening, arguments may become disorganised, or you may even raise doubts about your own case. Stick to the time allocated to you for oral submissions. Stick to the prescribed length of written submissions

Further Resources

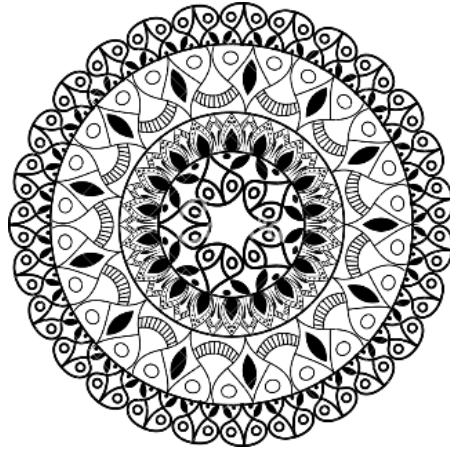
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- Quick guide to oral advocacy

[https://www.youtube.com/playlist?list=PLX5UauD6HM\\_Mfmf3SVGTK1xT2n9sWIYYw](https://www.youtube.com/playlist?list=PLX5UauD6HM_Mfmf3SVGTK1xT2n9sWIYYw)

- Extract from Persuading Judges by Antonio Scalia.
- Sections of all materials on making Oral or Closing Arguments / Final Submissions.

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Volume Two

**PROFESSIONAL CONDUCT**

## TAKING OF INSTRUCTIONS

### Introduction

Who is an advocate?

S.1 of the Advocates act defines an advocate as any person whose name is duly entered upon the roll.

## TAKING OF INSTRUCTIONS

Regulation 2(1) of the Advocates (Professional Conduct) Regulations provides that No advocate shall act for any person unless he or she has received instructions from that person or his or her duly authorised agent. There is a fiduciary relationship between advocate-client.

Ethical behaviour and integrity are the bed rock. Instructions are not static but progressive as you handle the clients work or case. This provision forbids an advocate from acting without instructions.

Mulenga Christopher v Stanbic Bank Misc. Application No. 200 of 2013, Madrama J (as he then was); it was an application to set aside an order under Order 36. There was no effective service of summons to give the defendant time to apply for leave to appear and defend. Court observed;

The second aspect of the case is that an advocate is required to obtain instructions from the client before taking action on any matter unless such an advocate is a recognised agent under the provisions of Order 3 of the Civil Procedure Rules. I considered a similar question in the case of Lakhman Bhimji versus Manor Developments Ltd MA 105 of 2010 (arising from Civil Suit No 35 of 2013). During the hearing of the application, it was contended for the respondent that the application for leave to appear and defend under the provisions of order 36 of the Civil Procedure Rules had been made out of time. In that case service had been effected on the applicant's counsel who was away upcountry. He was called on phone and later on found the summons in his office. This is what the court said:

“Application for leave has to be made within 10 days as stated in the summons and as provided under order 36 rules 3 of the Civil Procedure Rules.

I agree with Paul Baingana that he could not receive service of summons for a fresh suit on behalf of the Defendant. Firstly, being a fresh matter, he would need instructions of his client in terms of the contents and merits of the application in order to represent him effectively. Secondly, and more fundamentally, is the ethical question of how an Advocate can take up any matter without instructions of a client. A lawyer has no authority to act for anybody without instructions.

A lawyer could not receive court process on behalf of his client unless he is a duly authorised agent under the provisions of Order 3 of the Civil Procedure Rules. A lawyer cannot take action without instructions.

- When getting instructions, the mandate should be clearly spelt out. Be mindful of the scope of instructions.

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- Taking of instructions by an advocate is fundamentally an ethical issue. A lawyer has no authority to act for anybody without instructions.
- The relationship between an advocate and client is a contractual one. For it to exist, there must be evidence of instructions.
- Instructions from the client is what gives the advocate the authority and power to the extent of those instructions to act for the client.
- No advocate should purport to represent a client unless he or she satisfies himself of this (instructions).
- In some cases, the word retainer has the relationship between an advocate and client. A retainer entails the instructions by a client or a client's authorization for an advocate to act in a case or a fee paid to an advocate to act in a matter during a specified period or a specified matter or a fee paid in advance for work to be performed by an advocate in the future.

### RETAINER

In *Omulele and Tollo Advocates v Magnum Properties Ltd MISCELLANEOUS APPLICATION NO. 590 OF 2014, 2016 eKLR* quoted *NDAMBIRI & CO ADVOCATES v MWEA RICE GROWERS MULTIPURPOSE CO-OP LIMITED* in which Justice Wabweru said; "My understanding of the word retainer is instructions to act in a given matter in which the costs have been taxed." Court further noted that "Retainer" in the wider sense entails the instructions by a client or a client's authorization for a lawyer to act in a case or a fee paid to an advocate to act in a matter during a specified period or a specified matter, or a fee paid in advance for work to be performed by the lawyer in the future

An Advocate duly instructed is retained and where there is no dispute that an Advocate was duly instructed by the client in any matter, the retainer cannot be said to be in dispute. As a general principle, instructions to an advocate may not necessarily be written but there must be some material or conduct that when looked upon, it can be inferred that instructions exist.

In *Omulele and Tollo Advocates v Magnum Properties* Court held; that a retainer does not have to be in writing but the same can be inferred from the conduct of the parties or the circumstances of the case. Quoted "Justice Njagi, J in the case of *Nyakundi & Co. Advocates* gave the definition and form of retainer from *Halsbury's Law of England, 4th Edition, Re issue* at paragraph 99, page 83 where it stated: -

"The act of authorizing or employing a solicitor to act on behalf of a client constitutes the solicitor's retainer by that client. Thus the giving of a retainer is equivalent to the making of a contract for the solicitor's employment. Njagi J pointed out that in the same work, it is further explained that a retainer need not be in writing unless, under the general law of contract, the terms of the retainer or the disability of a party, to it make writing requisite. It is then further stated, the Judge added at paragraph 103 "even if there has been no written retainer, the court may imply the existence of a retainer from the acts of the parties in the particular case."



## JOINT INSTRUCTIONS

Instructions may be joined where two or more lawyers or law firms are representing a client. In such a situation, a joint notice of instructions is necessary and ought to be filed. The purpose of the notice of instructions is to notify or provide information of the facts of representation by both firms or whether a litigant has changed instructions. The notice also notifies about the address of service of court process.

*Ayebazibwe Raymond v Barclays Bank and Ors HCCS No. 165 of 2015.* Counsel David Oundo Wandera for the 3rd defendant objected to the appearance of Counsel Simon Tendo Kabenge working jointly with Dr James Akampumuza as Counsels for the plaintiffs. His contention is that he has never seen a notice of joint instructions from the firm of Counsel Simon Tendo Kabenge.

Held;

The purpose of the notice of instructions is to notify or provide information of the fact of representation by both firms and whether a litigant has changed instructions. The notice notifies about address for service of court process.

Regulation 2 of the Advocates (Professional Conduct) Regulations sub regulation 1 provides that no advocate shall act for any person unless he or she has received instructions from that person or his or her duly authorised agent. The question of whether an advocate has a right to appear in court is fundamental to the question of the ethical conduct of that advocate to his client and to the court. This is because an advocate may withdraw from the conduct of the case. the appearance of counsel Simon Tendo Kabenge without any notice that he is a joint counsel with Dr James Akampumuza who is clearly the advocate on record according to the pleadings offends the practice of the court.. In those circumstances, inasmuch as he may have been instructed by the plaintiff, he will not be permitted to participate in the proceedings unless and until he has filed a notice of joint instructions to appear jointly with Dr James Akampumuza on behalf of the plaintiff. This would make him accountable professionally and orders can be made that may be binding on him. In the circumstances counsel Simon Tendo Kabenge is barred from further appearing in the proceedings unless and until he files the requisite notice of joint instructions to represent the plaintiff.

## WHEN DOES THE ADVOCATE'S EARNING COMMENCE?

The moment an advocate gets instructions. In *Mayers and Another v Hamilton and Ors* (1975) EA 13. It was held that the moment an advocate is entitled to sue or defend, he is entitled to an instruction fee but he is not entitled at the moment of instruction to the he whole of the fee he may ultimately claim;

What would be the effect of counsel filing pleadings without instructions?

Where an advocate files pleadings or drafts documents without instructions, those pleadings are incompetent.

In *Kabale Housing Tenants Association Ltd v Kabale Municipal Council SC Civil Appeal No. 15 of 2013*, counsel filed pleadings for the appellant but there was evidence to show that the instructions were withdrawn

from him and he had no resolution to show that he was re-instructed. Court held that the application having been filed by counsel without instructions was incompetent. It stated; In cases where the instructions have been withdrawn, counsel cannot claim to have instructions to represent the client. Regulation 3(1) of the Advocates (professional Conduct) Regulations S.I 267-2 A suit brought without instructions is incompetent. See: Buikwe Coffee Ltd (1962) EA 327. Counsel must thus appear in court with full instructions and authority from his client. Failure to do so, an advocate will be acting on his own and will not be entitled to any costs. The application having been filed by counsel without instructions, it is, therefore, incompetent in law.

In Buikwe Estates Coffee Ltd v S. Lutach and Anor (1962) EA 328, counsel must appear in court with full instructions and authority from his client. Failure to do so, an advocate will be acting on his own and is not entitled to costs. If it should hereafter appear that the plaintiffs' advocate has not been duly authorised by the lawful directors to institute proceedings on behalf of the company, the advocate can be ordered to pay the costs of the suit personally.

Professionals offering services to public entities ought to always address their minds to the operating legal regimes in respect of the procedure on contractual engagement.

In Mugoye and Associated Advocates v Kiambu County Assembly Miscellaneous Application No. 18 of 2017 the applicants represented the client but he was not duly instructed. He filed a bill and it was referred to the judge. Court observed.

(a) the client was a public entity and therefore required to procure for goods and services in compliance with procurement law (PPDA).

(b) there was no evidence of any compliance with the law in so far as procurement of legal services of the advocates was concerned to establish an advocate-client relationship. (c) the law governing procurement by public entities required all procurements by state or public entities to comply with the law.

(d) those offering professional services must be aware of any legal regime regarding contracting of services.

(e) having previously had their fee paid without following the law, that omission cannot be construed as a certificate to use public resources without following the law.

## **ELEMENTS OF WITHDRAW FROM INSTRUCTIONS OR CLIENT'S CASE**

### **Introduction**

Once an advocate-client relationship is established, both the lawyer and the client retain the power to terminate the relationship. In the case of the client, the power to terminate is unfettered. A client can terminate an advocate-client relationship at any time for good reason, bad reason or no reason at all.

## I SO PRAY, MY LORD

The Advocates (Professional Conduct) Regulations Reg. 3(1) (a)-(d).. provide that an advocate may withdraw from a client's case where;

- 1) the client withdraws instructions,
- 2) the advocate is permitted by court to withdraw,
- 3) the client disregards an agreement or obligation as to payment of fees and disbursements, or
- 4) the client instructs the advocate to engage in unprofessional conduct or requires the advocate to act contrary to his or her advice to the client

### PROCEDURE FOR WITHDRAWAL OF REPRESENTATION

When an advocate intends to withdraw from case. What should he do?

In addition, the Regulations Reg. 3(2)(a) and (b).require an advocate who intends to withdraw from the conduct of a case to give his client, Court, opposite party sufficient notice of his intention to withdraw and to refund the client such proportionate professional fees as have not been earned by the advocate in the circumstances of the case.

You can't withdraw from a case in which you had no instructions in the 1st place. Neither can an advocate purport to take over a case from an advocate who has no instructions in the 1st place because there would be nothing to take over.

Eunice Warimu Vs Ruth Nyambura Chuchu (2012)-eKLR is a case which demonstrates the concept of withdraws with out by permission of the Court. The applicant in that case was seeking leave of court to cease acting for that defendant in that matter. After hearing submission the Court framed the following issue.

- 1) Whether this court can only leave for an advocate to cease leave from acting?

Held;

The general rule is that a client may retain an advocate of his or her choice or change that advocate whenever the need arises. The client may also terminate a retainer of an advocate at any time.

The only requirement for an Advocate wishing to withdraw from acting in the provisions is to give notice to all affected parties. Once the court is satisfied that this requirement has been met, it has no reason not to grant leave.

There are other circumstances where the advocate is under the duty to withdraw;

- a) Where the advocate is instructed by client to do something inconsistent with advocate's duty to the court.
- b) Where the client is guilty of dishonourable conduct of the proceedings or taking a position solemnly to harass another person or cause injury to another person or another parson's property.

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- c) Where it becomes clear that the advocates continued employment will lead to breach of rules of professional conduct e.g. rules relating to conflict of interest.
- d) Where the advocate is not competent to handle the matter.

### **TYPES OF WITHDRAWAL**

Optional withdrawal

Non-payment of fees.

Optional Withdrawal.

As a rule an advocate is entitled to withdraw where there has been a serious loss of confidence between advocate and client. Such a loss of confidence goes to the very basis of the relationship. The Advocate who is deceived by the client has justifiable cause to withdraw. The refusal of the client to accept and act upon the advocate's advise on a significant point might give rise to certain loss of confidence which would justify withdrawal. However, the Advocate shall not use the threat of withdrawal as a device to force the client into making a hasty decision

Non -payment of fees.

Failure of the part of the client after reasonable notice to provide funds on account disbursements on professional fees justifies withdrawal from the advocate unless serious prejudice to the client would result from that withdrawal. A client who hasn't paid an advocate at the point of withdrawal has an obligation to them.

Machira & Co. Advocates Vs Arthur Mabuka (Misc. App 358/2001) (find out the real parties)

Held; A client who chooses to withdraw his instructions from an advocate without his payment, undertaking or any other appropriate arrangement regarding the advocates fees must be prepared to pay the advocate such sum as may be found due and payable upon taxation of an advocate –client bill of costs. It would be oppressive to require that Advocate to wait until the matter is finalized by other advocates of him to recover his fees.

### **NOTICE OF WITHDRAWAL**

No definitive rule can be laid down as what constitutes reasonable notice of withdrawal. Sometimes notice requirements are established by statute or the rules of court or the rules of engagement. In other situations the advocate has a duty to protect the client's interest as far as possible and not to desert a client at critical stage of the matter or at the time the withdrawal will put the client in a position of peril.

### **DUTY FOLLOWING WITHDRAWAL.**

## I SO PRAY, MY LORD

Upon discharge or withdrawal, the advocate has a duty to;

- a) Deliver in an orderly and expeditious manner to the client or his nominees or members which include pleadings if at all and property in his possession to which the client is entitled.
- b) Give the client all into that may be required about the case/matter.
- c) To account for all funds of the client at hand and refund any remuneration not earned during employment.
- d) Properly render an account for outstanding fees and disbursements.
- e) To cooperate with succeeding advocate so as to minimize destruction, delay and expense in the transition.

## CONFLICT OF INTEREST

### Introduction

Black's law Dictionary 8th Edition defines conflict of interest as;

1. the real or seeming incompatibility between one's personal interests and one's public or fiduciary duties.
2. A real or seeming incompatibility between the interests of two of the advocates' clients such that the advocate is disqualified from representing both clients if the dual representation adversely affects either client or if the clients don't consent.

Conflict of interest is founded on the existence of a fiduciary r/ship between advocate and client. Conflicting interest is that interest that gives rise to significant danger that the advocate's representation of the client would be materially and adversely affected by the advocate's own interest or the advocates duties to another current client, former client or 3rd person.

The advocate's sense of judgment and freedom of action must be free from compromising influences so that the relationship between the advocates and client is not significantly impaired by the advocate acting against the client in any other matter.

### THE RULE.

- a) An advocate has a duty not to act for client when the interest of the client and personal interest of the advocate are in conflict.
- b) An advocate has a duty not to enter into or continue a business transaction with a client if it's reasonably obvious with an issue of contention between them may arise.

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There are no provisions in the Advocates (Professional Conduct) Regulations that speak directly to issues of client loyalty or conflicts of interests. Reference can be to Regs 10 and 4.

In Uganda VS Patricia O (ACD) HCMC No 1/2014 the accused was charged with an offence of conflict of interest. Lawrence GiduduJ. Relied on the definition of conflict of interest in Black's law Dictionary and held; apparently, the existence of a conflict of interest does not by itself mean wrongdoing. For many professionals, it is impossible to avoid having conflict of interest from time to time. A conflict of interest would only become legal matter if a person tries or indeed succeeds in influencing the outcome of a decision for personal benefit.

In *Moody v. Cox & Hatt* [1917] 2 Ch. 71. for the proposition that a conflict exists when an advocate's involvement in a matter is likely to create a claim of liability to one party under one scenario or to another party under the other scenario

### **CONFIDENTIALITY AND PRIVILEGE.**

#### Scenario

Imagine the following scenario. You have been engaged to represent a man who is concerned about being charged with the rape and murder of a young girl. During a conference a new client tells you that he was the one who raped and killed the girl. Meanwhile another man has been charged with the crime. The other man is tried, convicted and sentenced to death. What do you do?

Or imagine that you represent another man who is a suspect in a missing persons case. The man tells you that he did in fact kidnap and kill the missing people. He tells you where the bodies are. Meanwhile grieving family members are searching desperately for the people your client killed. What do you do?

The duty of confidentiality is grounded on the principle that the advocates play a role in society. That role is to represent the interests of their clients. In a criminal case the role is to minimize the criminal liability that their client will face. Advocates are not charged with the same duties as judges and investigators.

There are times when the role of the advocate may seem less morally and ethically appealing than others. Is it right to allow a man to be executed for a crime he did not commit while the real rapist and murderer goes free? Is it right to leave family members engaged in a desperate search for loved ones when you know where those loved ones are?

Lord Cockburn CJ: in *Southwark and Vauxhall Water Co. (1878)* 3 QBD 315. COA. Observes

“the relation between the client and his professional legal adviser is a confidential relation of such a nature that to my mind the maintenance of the privilege with regard to it is essential to the interest of justice to the wellbeing of society.

## I SO PRAY, MY LORD

Though it might occasionally happen, that the removal of the privilege will assist in the elucidation of matters in dispute, I don't think that this occasional benefit justifies us in carrying the attendant risk.

In Uganda the law on confidentiality is concise and direct. Regulation 7 of the Advocates (Professional Conduct) Regulations specifically protects information of clients from disclosure by their advocates. The Regulation reads as follows:

*“7. Nondisclosure of clients’ information*

*An advocate shall not disclose or divulge any information obtained or acquired as a result of his or her acting on behalf of a client except where this becomes necessary in the conduct of the affairs of that client, or otherwise required by law.”*

Confidentially issues may at times be blamed in some instances unless the client is first identified. As far as natural persons go, it's easy to identify who a client is. However complexity may arise especially in corporate circumstances and other situations regarding other forms of organisations D. Brian Denison and Pamela Kabyejera; Legal Ethics and Professionalism; A handbook for UG; gave an insight to this complexity.

The English Court of Appeal in *Three Rivers (No.5)*. has provided guidance on the issue of who is the client within the corporate setting. The Court indicated that not all employees of a large organization will be considered to be the client for the purposes of legal advice privilege. Where communications pass between an advocate and an employee who is not considered to be a client that documentation may not be subject to privilege. The Court's guidance seems to limit who constitutes “the client” to certain specified persons who have most contact with their legal advisers.

A highly influential decision in the corporate context is the U.S. Supreme Court decision in *Upjohn Co. v. United States*. 449 U.S. 383 (1981) The question facing the Court in *Upjohn* was whether employees had to be in the “control group” of the company in order to have their communications with counsel protected by the attorney-client privilege. Under the “control group test”, the privilege only extended to corporate officers who played a substantial role in deciding and directing the corporation's legal response

The Court in *Upjohn* rejected the “control group” test and expanded the scope of the attorney-client privilege in the corporate context to include communications with non-management employees. The Court reasoned that the privilege covered employee communications when those communications are within the scope of the employees' corporate duties and when the employees themselves are sufficiently aware that communications were conducted so that the corporation could obtain legal advice.

### **CONFIDENTIALITY RULE.**

An advocate has a duty in holding in strict confidence, all information concerning business affairs of the client where the information is acquired by the advocates as a result of professional relationship with the client. Except where disclosure is

- a) Expressly or impliedly authorized by client
- b) Where it's required by law. See Regulation 7.

Larb (U) Limited & others vs. Greenland Bank (Liquidation) & Anor High Court, Miscellaneous Application No. 420 of 2010 cited The COA of Kenya as it observed in the case King Woolen Mills Ltd Vs. Kaplan & Station Advocates (1990-94) I EA 244.

The fiduciary relationship created by the retainer between client and advocate demands that the knowledge acquired by the advocate while acting for the client be treated as confidential and should not be disclosed to anyone else without that client's consent. That fiduciary relationship exists even after conclusion of the matter for which the retainer was created. This principle applies equally where an advocate acts for two or more clients in the same transaction or subject matter because the retainer is specific between the individual client and the common advocate. There exists no fiduciary relationship between the two or more clients of the common advocate. Any knowledge received from each client and their common advocate, although the common advocate acting for two or more clients will be able to complete the transaction speedily and save the clients expense by engaging one common advocate; this fact alone is for convenience only and does not affect the general principle that he should not so act or divulge the confidential information received by him from one client to the other client or clients without the consent of the client in the retainer imparting the confidential information. The corollary to this cardinal principle is that the advocate having so acted for two or more clients should be wary to act for one client against the other client or clients in a subsequent action or litigation concerning the original transaction or the subject matter for which he acted for the clients as their common advocate. The reason for this is not farfetched. The information or knowledge so acquired and which is confidential by reason of the fiduciary relationship between the opponent client and the common advocates will place the other client or clients at a disadvantage occasioning prejudice if that knowledge or information is used against them by the common advocate in a subsequent litigation arising from the original transaction or subject matter for which he acted for the clients as their common advocate. As such the conflict of interest is apparent and the common advocate should not act for one of his client or clients against the other client or clients in a subsequent litigation arising from the original transaction or the subject matter.

## **GUIDING PRINCIPLES IN AN ADVOCATE-CLIENT RELATIONSHIP**

### **Introduction**

The advocate can't render effective professional service for the client unless there is full and unreserved communication in between them. The client must feel completely secure entitled to presume that unless there is an agreement of the advocate to the contrary. All material disclosed? Matters discussed with Advocate will be kept secret and confidential. Privilege is divided into two parts;

- (1) Private; granted to the client in an advocate-client relationship.



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(2) Official; This flows from the official status of the person, includes the privileges of judges and Magistrates, public officers in connection with official information e.g. A police officer can claim privilege in Court not to disclose his source of information.

### **BASIS FOR EXISTENCE OF PRIVILEGE.**

1. There must be an advocate –client relationship existence.
2. There is no privilege to communications made between creation of relationship of an advocate and client.

Peter Jogo t/a M/S Ayume, Jogo Tabu & Co. Advocates V The Registered Trustees Of The Church Of The Province Of Uganda HCCA No. 0016 Of 2017, Stephen Mubiru Held;

For the purposes of invoking the advocate-client privilege two conditions must be met: (1) the client must communicate with the advocate to obtain legal advice, and (2) the client must interact with the advocate to advance the client's own interests. It covers confidential communication concerning matters within the client's own interests where the advocate was sufficiently aware that he or she was being questioned in order that the client could obtain legal advice. In this context, a client is generally defined as the intended and immediate beneficiary of the advocate's services.

In general terms therefore, the relationship of client and advocate arises when: a person manifests to an advocate the person's intent that the advocate provides legal services for that person; and either (a) the advocate manifests to the person consent to do so; or (b) the advocate fails to manifest lack of consent to do so, and the advocate knows or should know that the person reasonably relies on the advocate to provide the services; or a court with power to do so appoints the advocate to provide the services. There ought to be a manifestation in words, conduct or both, of consent by the advocate to that other person that the advocate shall act on his or her behalf. By this baseline definition, an advocate-client relationship could form either by consent of both parties or under an estoppel. Neither payment of a fee, a formal contract nor an express appointment and acceptance is essential to the formation of the relationship.

Whereas giving general legal information, or even generalised advice may not result in the creation of an advocate-client relationship, on the other hand discussing actual cases, giving specific advice or recommendations tailored to the unique facts of a particular person's circumstances, creates a belief in the mind of a prospective client that an advocate-client relationship has begun and it is imperative for advocates to delineate clearly when a relationship has formed and when it has ended.

In any case where the existence of an advocate-client relationship is in issue, it will be necessary to identify the nature of the duties and responsibilities that are at issue and to determine the existence of the relationship in that context. Literally, Legal services entail help or assistance in the field of law. The services may be provided in conducting legal proceedings before courts, tribunals or any authority as well as providing legal advice. The advocate-client relationship is sufficiently established when the advice and assistance of the advocate are sought and received in matters pertinent to the advocate's profession.

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Look at s.128EA.Cap6-(s.125-128).

S.125 EA provides the scope of privilege attached to professional communication e.g. it restricts attorneys from disclosing any information exchanged with clients. It also provides certain exceptional grounds where this privilege will stand denied e.g. in furtherance of any legal purpose. Some crime, fraud. It's immaterial whether the intention of such advocate was not directed to such information by the client or on his behalf.

s.126; extends the privilege provided under s.125 to the interpreters, clerks and servants of an advocate.

S.127 binds an advocate from discussing any information in s.125 unless the client calls the advocate as witness and cautions him (consent of client).

S.128: is to the effect that no one can be compelled to disclose to the court any confidential information that has taken place between him and his advocate unless he is offered as a witness.

R Vs King (1993) 1 ALLER 929. Court held that the rule of evidence that legal professional privilege attaches to confidential communications between a solicitor and an expert but not to the expert's opinion or the chattels or documents on which he has based his opinion applies to criminal as well as civil proceedings. Accordingly, in a criminal trial the Crown is entitled to call on subpoena as a witness a handwriting expert whom the defence has consulted but does not wish to call as a witness, and is further entitled to production of documents sent to the expert by the defence for examination and on which the expert has based his opinion, provided the documents are not protected by legal professional privilege.

The privilege is essential to the adversary system of procedure which would be unworkable if parties were obliged to disclose communications with prospective witnesses.' Under the Evidence Act, the legal professional privilege extends to clerks (legal) or servants' merely agreeing to give evidence on behalf of the client doesn't waive the privilege.

S.125; claim privilege under this section, a communication by party to his advocate, the communication must be on a confidential nature.

Memon Hajee Harim Vs. Abdul Karim (1878) 3 BOM 91

The word "disclose" was held to apply in circumstances where the communication is of a confidential nature. In that case the communication between advocate and client was made in the presence and full hearing of counsel, plaintiff, defendant and therefore couldn't be held to be privileged.

In Uganda, as a general principle any person who seeks advice from a practicing advocate would have the benefit to client-advocate privilege. There is also an extension to employees, accountants, paralegals of advocate. Look at s.6 of Advocate Act (Cap 267).

Peter Jogo t/a M/S Ayume, Jogo Tabu & Co. Advocates V The Registered Trustees Of The Church Of The Province Of Uganda HCCA No. 0016 Of 2017

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Held; The legal advice privilege covers communications between lawyers and their clients whereby legal advice is sought or given. Not every communication with an advocate is privileged. Only communications between the advocate and his or her client for the purpose of obtaining legal advice are privileged. Also, the legal advice must be the central purpose of the communication and not secondary, legal advice must predominate. The privilege does not apply where the legal advice is merely incidental to business advice (see *Three Rivers District Council and others v. Governor and Company of the Bank of England (No 6)*, [2004] 3 WLR 1274, [2005] 1 AC 610).

*Omar son/of Hassan vs. R (1953)23EACA 550.*

The appellant was convicted of murder partly for his refusal to testify on court against the advice of his counsel. On appeal; held; The disclosure by advocate that the accused had refused to follow his advice was a breach of professional confidence. The judge shouldn't have allowed it to affect his professional mind.

### **NON-DISCLOSURE OF ADVOCATE-CLIENT RELATIONSHIP**

As a general rule, an advocate has a duty not to disclose that he /she has been consulted or retained by a person unless the nature of matter requires them to do so.

Continuing duty of secrecy.

The advocate holds a duty of secrecy with every client regardless of whether they are continuing or casual client. This duty survives the professional relationship and continues indefinitely after the advocate has ceased to act for the client. Whether or not difference have risen between them. The fiduciary relationship forbids advocate to use any confidential information acquired by advocate as a result of professional relationship for the benefit of the advocate or 3rd person or to disadvantage the client.

The advocate has a duty not to disclose to one client confidential information received from another client; to decline instructions that might require such disclosure.

*Conlon v Conlons Ltd [1952] 2 All ER 462* Held – The rule as to privilege did not extend to communications between a client and his solicitor which the client instructed his solicitor to repeat to the other party, for such communications were not confidential, and, therefore, the plaintiff was bound to answer the interrogatories

Gossip.

An advocate has a duty

- a) To avoid reckless conversations even with a advocate spouse or family about client affairs
- b) To shun any gossip about the client's gossip even the client is not named or otherwise identified.
- c) Not to repeat any gossip or information about client's affairs that may be over heard by the advocate.

Apart from ethical considerations or acts of good faith, indiscreet shack talk between advocates if overheard by 3rd parties able to identify matter being discussed could result in prejudice of the client's also result in respect to the listener of the advocate concerned by the legal professional generally being lessened.

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Held; From the perspective of the duty of confidentiality, under regulation 7 of The Advocates (Professional Conduct) Regulations, S.I 267, an advocate is precluded from disclosing or divulging any information obtained or acquired as a result of his or her acting on behalf of a client except where this becomes necessary in the conduct of the affairs of that client, or otherwise required by law. By virtue of this requirement, an advocate has the same duty of confidentiality to a person who discusses with the advocate the possibility of forming a client-advocate relationship, as the advocate does to clients, if the advocate receives information from the prospective client that could be considered significantly harmful. The advocate is not be permitted to represent any clients against the prospective client in the matter about which the advocate was consulted, absent consent.

#### **WHEN DISCLOSURE IS PERMITTED.**

The advocate-client privilege is not absolute. Under certain circumstances it can be waived. In Uganda, Regulation 7 of the Advocates (Professional Conduct) Regulations provides that “an advocate shall not disclose or divulge any information obtained or acquired as a result of his or her acting on behalf of a client except where this becomes necessary in the conduct of the affairs of that client, or otherwise required by law.”

Based on the existing law of Uganda and the broader common law jurisprudence there seem to be six basic scenarios where the duty of confidentiality to a client is waived. These are: 1) when the client is misleading the court; 2) where there is an instance of criminal conduct that requires compulsory criminal disclosure based on legislative decree; 3) where the client is attempting to use legal advice to accomplish a criminal or fraudulent act; 4) when the client sues the advocate or otherwise seeks to impugn the character or professional status of the advocate; 5) when the client waives confidentiality; and 6) where the advocate is required to make disclosures by court order. Some of these grounds for waiver have clearer support under the laws of Uganda than others.

##### **1. When the Client is Misleading the Court**

In Uganda, as an officer of court, an advocate is required to take corrective action when the advocate's client misleads the court. This duty trumps the advocate-client privilege to the extent that breaching such privilege is necessary to adequately inform the court.

This is perhaps the clearest instance of waiver under the laws of Uganda. Regulation 16 of the Advocates (Professional Conduct) Regulations provides that “if any advocate becomes aware that any person has, before the court, sworn a false affidavit or given false evidence, he or she shall inform the court of his or her discovery.”

##### **2. When there is a Mandatory Disclosure Provision in a Criminal Statute**

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In certain jurisdictions there are criminal statutes that place an affirmative duty on those with knowledge of certain criminal activities to report them. This is the case with the United Kingdom's Proceeds of Crime Act, 2002 which requires solicitors who are suspicious about acts of tax evasion or other criminal activity that has resulted in a financial benefit to report their suspicions to governmental authorities. At this time there are no similar statutes in place in Uganda.

### 3. In Order to Prevent a Client from Using Legal Advice to Accomplish a Criminal or Fraudulent Act

Another widely held basis of waiver of the advocate-client privilege is where the client is using legal advice or services to further a criminal or fraudulent enterprise. In the British case of *R vs. Cox and Railton* (1884) 14 QBD 153 at pg.167 Stephen J cautioned that the attorney-client privilege cannot be used to protect criminal communications. He asserts that communication in furtherance of a criminal purpose does not come within the ordinary scope of professional employment.

In Uganda this exception is provided for under Section 125 of the Evidence Act, which allows for the disclosure of otherwise privileged advocate-client communications and material when there is a communication made for an illegal purpose or when the advocate observes a fact showing that a crime or fraud has been committed by the client after representation has begun.

*Mohammed Salim Balala & another v Tor Allan Safaris Limited* [2015] eKLR; The COA in Kenya held that the advocate –client privilege can only be breached where the communication between advocate client further an illegal purposes or where advocate observes the client used the privilege.

### 4. Where a Client Brings a Civil, Criminal or Disciplinary Action against the Client's Advocate

In most jurisdictions advocates have the right to defend themselves from allegations lodged by clients arising out of the advocate-client relationship. This exception to advocate-client confidentiality springs from the due process rights of the advocate. Certainly if a client chooses to sue or prosecute an advocate for alleged wrongdoing in that advocate's representation of the client, the advocate should be permitted to a defence. This defence must reasonably include the right to present evidence concerning and arising out of the advocate-client relationship that serves as the factual basis of the client's claim.

Notably this exception is not expressly found in the Advocates (Professional Conduct) Regulations or in the Evidence Act. However, a fair and expansive reading of Section 125 and 128 of the Evidence Act could be deemed to allow the Court to permit advocate testimony on otherwise confidential advocate-client matters when the client proffers information regarding the conduct of the advocate during the course of the advocate-client relationship. The Court could deem such a proffer as amounting to a waiver of the advocate's duty of non-disclosure under Section 125 and as a waiver of the client's privilege under Section 128.

Are liable in respect to matters involving client affairs.

Have committed acts of professional negligence. Have engaged in acts of professional misconduct, conduct unbecoming of an advocate, incapacity or proof incompetence, an advocate may disclose confidential

information in order to defend unless the allegations that the advocate shall not disclose more information than required.

An advocate should exercise restraint in determining when and to whom to disclose confidential information in order to defend against such allegations. An extent such disclosure is necessary on the given circumstances.

An advocate should consider that any such disclosure must be proportional and commensurate to source and nature of the complaint. In most cases, it will be appropriate for the advocate to immediately notify the client if there is disclosure of such confidential information so that the advocate can defend himself.

An advocate has a duty of disclose information necessary to present a crime where the advocate has reasonable grounds of believing that the crime is likely to be committed

#### 5. Where the Client Waives Confidentiality

The client's power to waive confidentiality is inherent to the right. The right of confidentiality and all resulting privileges belong to the client. Waiver may be express or implied from conduct. It may also be imputed from the relevant circumstances. For instance, if the client does not intend the discussion to be confidential or if the client discloses the matters to others. Since the privilege belongs to the client, no rule prohibits him/her from divulging his own secrets; and if the client has voluntarily waived the privilege, it cannot be insisted on to close the mouth of the advocate. However, in most instances advocates should err on the side of presuming that confidentiality has not been waived.

Moreover, advocates in Uganda should not use waiver as a reason for disclosing or divulging information acquired in the context of legal representation outside of the court setting as this is not an exception to the requirement of non-disclosure found in Regulation 7 of the Advocates (Professional Conduct) Regulations. A provision for waiver of an advocate's duty of nondisclosure is only found in Section 125 of the Evidence Act.

During pleadings some disclosure may be necessary in pleading or other documents delivered in litigation delivered by client. Unless client directs advocate to the contrary the advocate may disclose client affairs to partners in the firm and to the extent necessary to non-legal staff such as clerk and secretaries. An advocate has a duty to impress upon associates, students, employees of advocates office, the importance of non-disclosure both during and after employment, take reasonable care to prevent them from disclosing or using any information advocate is bound to keep in confidence.

#### 6. Where the Advocate is Required to Make Disclosures by Court Order

Finally, in most jurisdictions there is the court order exception to the duty of confidentiality. Certainly, advocates should not be disciplined for producing otherwise confidential information and material pursuant to a court order. However, advocates should endeavour to assert available legal privileges against efforts to force production in the context of litigation. If an advocate fails to assert viable privileges and grounds for non-disclosure it could be considered malpractice. Without privileges, the litigation process could empower both courts and opposing counsel to eviscerate the legal protections afforded to the client based on the requirement

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of confidentiality. Where privileges are raised but the court still requires production, counsel must comply with the instructions of the court.

Privilege: A privileged professional communication is a protection awarded to communication between legal advisor and client. Professional communication and confidential communication with a legal advisor has been accorded protection the Evidence Act, Cap 6.

In *Anderson v Bank of British Columbia* (2 ChD 648): Sir George Jessel MR in a judgment which was approved in *Conlon v Conlons Ltd* [1952] 2 All ER 462 said “What is the rule [as to privilege] and what is the meaning of the rule? The object and meaning of the rule is this: that as, by reason of the complexity and difficulty of our law, litigation can only be properly conducted by professional men, it is absolutely necessary that a man, in order to prosecute his rights or to defend himself from an improper claim, should have recourse to the assistance of professional lawyers, and it being so absolutely necessary, it is equally necessary, to use a vulgar phrase, that he should be able to make a clean breast of it to the gentleman whom he consults with a view to the prosecution of his claim, or the substantiating his defence against the claim of others; that he should be able to place unrestricted and unbounded confidence in the professional agent, and that the communications he so makes to him should be kept secret, unless with his consent (for it is his privilege, and not the privilege of the confidential agent), that he should be enabled properly to conduct his litigation. That is the meaning of the rule.”

If the privilege didn't exist, people would be dispossessed all professional assistance. A client wouldn't venture to consult any called person or would only dare to tell his counsel a half of his case.

*Larsen & Toubro Limited vs Prime Displays (P) Ltd.*, 2002 (5) BomCR 158, 2003 114 a number of documents to be tendered in Court became a controversy. Court relied on *Southwark and Vauxhall Water Company* [(1978) 3 QBD 315 (CA)] where Cotton J observed;

“The relation between the client and his professional legal adviser is a confidential relation of such a nature that to my mind the maintenance of the privilege with regard to it is essential to the interests of justice and the well-being of society..... I think, is the true principle, that if a document comes into existence for the purpose of being communicated to the solicitor with the object of obtaining his advice, or of enabling him either to prosecute or defend an action, then it is privileged, because [it] is something done for the purpose of serving as a communication between the client and the solicitor.

## DUTIES OF AN ADVOCATE.

Professional conduct Regulations.

“A practising lawyer, by the very fact that he practices, holds himself out as having the knowledge, skill and judgment of a lawyer. He knows that a client consults him for that reason, and by undertaking work for the client he impliedly undertakes to have and apply the knowledge, skill and judgment necessary for the work. If he

does not have it and does not intend to get it, he is in automatic and immediate breach of an ethical duty to the client.” (WH HURLBURT, Incompetent service and professional responsibility (1980) 19ALLawReview pg149).

The service of an advocate is a full job requiring certain responsibility dedication and loyalties from the advocate to his client. The advocate should therefore be free from other employment distractions and dedicate his service to his client.

Satish Kamar Shama Vs. Law Council of Himachal. Appeal) civil) 3395(1997); decision for the proposition that an advocate shall not be a full time salaried employee for any person, government, firm, corporation so long as he continues to practice and shall on taking up any such employment intimate the fact to the law council on whose roll his name appears and shall thereupon cease to practice as an advocate so long as he continues in such employment.

S.6 Advocate Act; Although any form in that case may not be representative of the general position in Uganda, it does however serve as a good illustration for an advocate to ride two horses at the same time.

In Dr Haniraj Chulani v Bar Council of Maharashtra and Goa (1996) A.I.R. 1708 this was a case in which a medical doctor who studied law challenged the Bar Council’s rejection of his application for enrollment as an advocate. The Supreme Court of India held the legal profession requires full time attention and would not countenance an advocate riding two horses or more at a time. That the medical profession is a time needing profession and a person cannot insist to be a practicing medical doctor and advocate simultaneously as such would create an awkward situation for his clients as well as patients.

## **Duties;**

Duty to accept briefs;

An advocate is under an obligation to accept a brief in the courts he intends to practice unless there are special circumstances which justify his refusal to accept a particular brief. Every person who is in need of professional services may exercise the right to engage services of counsel in the presentation of his case. Article 28 of the Constitution. Therefore it’s the duty of every advocate to whom the privilege of practicing in the courts of law is afforded to carry out the said instructions with diligence. It shall be the duty of an advocate when accepting a brief to recopy in a letter to his client, the scope of work to be done in the brief and the services for which the client will be charged. Any amendment to the scope of work may be done with the consent of the client and shall duly be recorded by the advocate. Advocate shall not stipulate for a fee contingent on the result of litigation or agree to share the proceeds thereof.

Muwema and Mugerwa Advocates v Shell U Ltd and Ors SCCA 18 of 2011. (refer to page 43-44)

An advocate may declaim a specialist brief if he considers himself not qualified to accept the brief. An earlier brief once accepted takes precedent over a later brief should any conflict arise in regard to the performance of such briefs. Advocate shall give his personal attention to all briefs. In doing so he must hold requisite conferences and consultations with all clients and its improper to handover the claims to anyone else. It is



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improper for an advocate to hold a brief for another advocate except in the case of illness or intervention of unforeseen and avoidable contingencies causing the latter's absence or for any other reason which in the opinion of the law council is good in such circumstances.

An advocate shall accept only as many briefs as he can attend to and shall refrain from accepting briefs in which he is not likely to be available owing to his pre-occupation in other matters. It shall be improper for an advocate to change an additional fee to ensure his presence in a matter once he has accepted a brief unless it is provided for. In a case where an advocate after obtaining a fee in advance, he is unable to appear in court at the time of the hearing the case, an advocate shall be forced to return all the fees to the client. The word brief includes transactional and non-litigation work entrusted by a client and handled by a lawyer or a firm of lawyers.

### **ADVOCATE'S DUTY TO COURT.**

An advocate's duty to court raises a fundamental obligation that defines his role to the justice system. However, an advocate's duties are not carved out in a vacuum while facing financial and competitive persons. Advocates must fulfill and balance their duties to the client, opposing counsel, the administration of justice and the society at large.

3 key duties to court.

I. To use tactics that are legal, honest and respectful to court and tribunal.

II. To act with integrity and professionalism while maintaining his responsibility to ensure civil conduct.

III. To educate clients about court processes in the process of promoting public confidence in the administration of justice.

- An advocate shall appear in court at all times in prescribed dress and his appearance shall always be presentable and neat.
- An advocate shall during the presentation of his case conduct himself with dignity, respect and honesty.
- An advocate shall address only the court at all times and shall refrain making any statements to opposite party or interrupt the opposite party when it is not his time to address the court.
- He shall maintain a respectful attitude in court bearing in mind the dignity of the judicial officers. He shall not be ----- if he has any complaint or grievance against any judicial officer he shall submit to the proper officer a complaint.
- He shall refrain from making any personal statements to the witnesses and treat them with respect.
- An advocate shall not influence any decision of court by any illegal means. Private communications with the judge pending any decision are forbidden.

An advocate at the appropriate time in the hearing of the case shall inform the court of;

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- a. Any binding authority decided by the court of record.
- b. Any authority or materials or similar legislation as that in question of the case including any authority decided in the Supreme Court which has not disapproved of that authority.
- c. Any applicable legislation which the advocate has reasonable grounds to believe to be directly applicable.
- d. Inform court as to the effect of an order which the court is making as soon as the advocate becomes aware of the misapprehension.

### Misleading statements.

An advocate must not make any misleading statements to court. An Advocate must take all necessary steps to correct any misleading statement to court as soon as possible when he became aware that its misleading. An advocate has a duty not to divert from material facts of which he has knowledge coupled with the duty not to mislead court and ought to be balanced with his duty not to disclose to court also information confided to him by his client.

As a general rule, an advocate will not have made a misleading statement to court by failing to disclose facts known to the advocate concerning the client's character or past conduct. An advocate's duty to court also helps to define the limits of the zealous nature of the client.

### **Duty to the client.**

The Advocates Act S.1(b) defines a client as including "any person, who as principal, or on behalf of another, or as trustee or personal representative, or in any other capacity, has power, express, or implied, to retain or employ, and retains or employs, or is about to retain or employ, an advocate, and any person who is or may be liable to pay to an advocate any costs."

An advocate has a duty to appear and represent the client with due diligence at all times. He must not put the interests of the client to a disadvantage. He must attend to the instructions at all times as scheduled.

NG. Dastane v Shrikant S. Shivde and anor case no 3453, the Supreme Court of India was faced with a situation where two advocates succeeded in tormenting a witness by seeking numerous adjournments for cross examining him in a court of a judicial magistrate. The judicial magistrate had at all times obliged to the adjournments at merely asking. At some point during the process of the case, one of the respondents sought an adjournment on account that he was unable to speak because of hurting throat and that the doctor had advised him to take it two weeks rest and wasn't able to conduct the matter before court. It was therefore prayed that the matter be

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adjourned for three weeks. However, after the case had been adjourned the appellant went out of the court room and while he was walking around the court premises, he came across the first respondent forcefully and competently arguing the matter by another court situate in the same building. It was this that forced him to open a complaint before the state law council which dismissed it saying there was no prima facie case;

Supreme court ruled that Advocate abusing the process of court is guilty of misconduct. When witnesses are present in Court for examination the advocate concerned has a duty to see that their examination is conducted. If the advocate has any unavoidable inconvenience, it is his duty to make other arrangements for examining the witnesses who is present in Court. Seeking adjournments for postponing the examination of witnesses who are present in Court even without making other arrangements for examining such witnesses is a dereliction of advocates duty to the Court as that would cause much harassment and hardship to the witnesses. Such dereliction if repeated would amount to misconduct of the advocate concerned. Legal profession must be purified from such abuses of the Court procedures. Tactics of filibuster, if adopted by an advocate, is also professional misconduct. Court found that the conduct of the advocates could amount to professional misconduct and referred the matter back to the state council for determination.

Other duties of advocate to the client.

- Execute duties as expected of an advocate
- It shall be the duty of the advocate to fearlessly uphold the interests of his or her client by all fair and honourable means without regard to any unpleasant consequences to himself or others.
- Seek to advise the client to understand the issues in the case and the client's rights and obligations.
- Expected to give advice on such matters to enable the client give proper instructions.
- Shall not make any compromise without the proper specific instructions of the client.
- Must (unless the circumstances warrant) advise a client appropriately regarding any experiences which may be advantageous or otherwise.
- Must in contentious matters represent the client not only by mere appearance in court but to diligently represent the client and regularly and promptly update the client on the developments in the client's case as often as possible and definitely after ever hearing in every matter.
- In civil matters, the advocate may as far as possible suggest to the client the option of mediation or arbitration as ADR.
- To hold is strict confidence all information concerning the business and affairs of the client.
- Shall not at any time be a party to causing discordant in litigation....don't talk ill of litigation.
- Shall not act on the instructions of any person other than his or her client or an authorized person/agent of the client.

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- Avoid conflict of interest at all times
- Shall charge such fees as reasonable on receiving the instructions at hand and guided by the law on remuneration of advocates.
- Shall as far as possible accept payment of fees only by cheque but if payment is made in cash proper receipts be furnished to the client and a register of the same is maintained.
- Should account and keep account of the client's money entrusted to him or her and the account should be showing the amount received from the client. Withdrawals, expenses with respective dates. The entries into accounts for money received should contain reference as whether the money has been received for fees or expenses. No advocate shall except with the consent in writing of a client be at liberty to divert any expenses from the fees. After the termination of the proceedings, the advocate shall be at liberty to appropriate towards the settled fees due to him any sum remaining and settle the accounts. The advocate shall be entitled to deduct out of any money of the client remaining in the advocate's hands at the termination of the proceedings for which the advocate had been engaged i.e the fee payable under the rules of court. A copy of the client's account shall be furnished to him on demand.

### **ADVOCATE'S DUTIES TO COLLEAGUE.**

- Not to allow any ill feelings between clients to influence his conduct toward the other advocate or advocate's client.
- Personal animosity may cause them judgment to be clouded by emotional factors and hinder professional resolution of the matter.
- Not to make discouraging remarks about another advocate. Offensive tactics interfere with the orderly administration of justice and have no place in the legal system.
- Advocates should avoid any kind of criminal behaviour towards other advocates.
- Avoid dishonest practice.
- Has a duty not to impose on another advocate unless required by the transaction impossible impractical or manifestly unfair conditions of trust. These include restraints to time.
- An advocate who has access or comes into possession of a document which the advocate reasonably believes its intended for an opposing party has a duty, (a) to return the document unread and unopened (b) if he reads by realizing its not intended for him to cease reading.
- Duty to concede to a reasonable request for a trial date, adjournment, a waiver of a procedural formality.

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- Advocate who knows that another has been consulted in respect of a matter has a duty not to proceed in default of that same matter.

In *Acaali Manzi v Nile Bank* 1994 KALR 123 court refused an adjournment by letter.

In *Nuru Kaaya v Crescent Transportation Ltd* SCCA no. 6 of 2002; The issue was that "The learned trial judge wrongly exercised his discretion when he refused to grant an adjournment to enable the appellant call its witness and proceeded to immediately enter judgment for the respondent for UD\$ 58,396.

Held; two principles govern the exercise of discretion. The first, is that when trial courts grant adjournments they (courts) exercise judicial discretion. The second, is that an appellate court will normally not interfere with the exercise of judicial discretion by a lower court unless the lower court failed to exercise the discretion judiciously.

Tsekooko agreed with the following passage Per Twinomujuni;

"It is generally accepted that the essence of a trial is that both parties should be heard and except where a party is deliberately dragging the proceedings in a trial, such a party should not be denied opportunity to present its case. In the circumstances of this case, I am unable to hold that the learned trial judge exercised his discretion judiciously. The refusal to grant an adjournment to the appellant was totally unjustified and occasioned a serious miscarriage of justice. This court therefore, has a duty to interfere with the trial judges exercise of discretion to correct the injustice".

- Recording; An advocate has a duty not to use a tape recorder or other device to record the conversation with a client or advocate or anyone else even if lawful without first informing that person.
- On letters; An advocate has a duty to answer with reasonable promptness any professional letter or communication from another advocate that requires an answer and has a duty to be punctual in fulfilling the obligations.
- Not to give or request an undertaking that can't be fulfilled.
- Duty to fulfill every undertaking given
- To honour a trust condition once accepted
- To provide a written undertaking in an unambiguous terms.

*R v Advocate Disciplinary Tribunal* MA No. 459 of 2014 KLR

Held; An undertaking is a promise to do or refrain from doing something or acting in a manner which may prejudice the right of the opposite party. It means it is an unequivocal declaration of intention addressed to someone who reasonably places reliance on it. It can be made by an advocate either personally or through the name of the firm he usually practices under... that breach of professional undertaking amounts to a professional misconduct. Since an advocate has a professional duty and or obligation to honour his undertaking, the failure to do so in my view amounts to a "disgraceful or dishonourable conduct incompatible with the status of an

advocate hence constitutes a professional misconduct in which event the Tribunal is empowered to investigate the same

- Not to attempt to negotiate a matter with a party including a government officer or body represented by an advocate except with consent of that advocate.
- An advocate retained by another as counsel or advisor in a matter has a duty to act only as counsel or advisor and respect the other advocate.
- Has a duty to avoid ill considered or uninformed ... of competence, advice or conduct of another advocate but has a duty when requested to advise and if appropriate to represent the client.
- An advocate has a duty to respect lay persons lawfully representing themselves.

## PROFESSIONAL MISCONDUCT

### Introduction

S. 2 (k) of the Advocates Act defines “professional misconduct” to include disgraceful or dishonourable conduct not befitting an advocate. Misconduct has been defined in Black's Law Dictionary, sixth Edition at Page 999 thus:-

*“A Transgression of some established and definite rule of action, a forbidden act, a dereliction from duty, unlawful behaviour, wilful in character, improper or wrong behaviour, its synonyms are misdemeanour, misdeed, misbehaviour, delinquency, impropriety, mismanagement, offense, but not negligence or carelessness.”*

In *Re A Solicitor Ex Parte the Law Society* (1912) 1 KB 302 Darling J held that if it is shown that an advocate in the pursuit of his profession, has done something with regard to it which would be reasonably regarded as disgraceful or dishonourable by his professional brethren of good repute, then it is open to say he is guilty of professional misconduct.

Lord Atkins in *Myers v Elman* [1940] AC 282, (1939) 4 ALL ER 484, described misconduct “By misconduct is meant something which would reasonably be regarded as disgraceful or dishonourable by solicitors of good repute—for example, wilfully misleading the court in the conduct of a case.’ Viscount Maugham said:

“Apart from the statutory grounds ... a solicitor may be struck off the rolls or suspended on the ground of professional misconduct, words which have been properly defined as conduct which would reasonably be regarded as disgraceful or dishonourable by solicitors of good repute and competency.”

### WHAT CONSTITUTES MISCONDUCT.

Misconduct is a sufficiently wide expression but need not necessarily imply the involvement of moral turpitude.

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The credibility and reputation of the profession depend on the manner in which the members of the profession conduct themselves without reproach or alienating the favourable opinion which the public should entertain concerning it.

In *Shambhu Ram Yadav vs Hanum Das Khattri Appeal (civil) 6768 of 2000*. A complaint filed by the appellant against the respondent, Advocate before Bar Council of Rajasthan was referred to Disciplinary Committee constituted by the State Bar Council. In substance, the complaint was that respondent while appearing as a counsel in a suit pending in a civil court wrote a letter to Mahant Rajgiri his client inter alia stating that his another client has told him that the concerned judge accepts bribe and he has obtained several favourable orders from him in his favour; if he can influence the judge through some other gentleman, then it is different thing, otherwise he should send to him a sum of Rs.10,000/- so that through the said client the suit is got decided in his (Mahant Rajgiri) favour. The letter further stated that if Mahant can personally win over the judge on his side then there is no need to spend money. In reply to complaint, respondent pleaded that the services of the Presiding Judge were terminated on account of illegal gratification and he had followed the norms of professional ethics and brought these facts to the knowledge of his client to protect his interest and the money was not sent by his client to him. Under these circumstances it was urged that the respondent had not committed any professional misconduct. The State Bar Council noticing that the respondent had admitted the contents of the letter came to the conclusion that it constitutes misconduct.

The Supreme Court of India held; Legal profession is not a trade or business. It is a noble profession. Members belonging to this profession have not to encourage dishonesty and corruption but have to strive to secure justice to their clients if it is legally possible. The credibility and reputation of the profession depends upon the manner in which the members of the profession conduct themselves. There is heavy responsibility on those on whom duty has been vested under the Advocates Act, 1961 to take disciplinary action when the credibility and reputation of the profession comes under a cloud on account of acts of omission and commission by any member of the profession.

To understand the scope and implication of the term misconduct the context of the role and responsibility of an advocate should be kept in mind and misconduct has to be construed with reference to the subject and the context wherein the term occurs.

In the Indian case of *State Of Punjab And Ors vs Ram Singh Ex. Constable 1992 AIR 2188, 1992 SCR (3) 634* it was held " Thus it could be seen that the word 'misconduct' though not capable of precise definition, on reflection receives its connotation from the context, the delinquency in its performance and its effect on the discipline and the nature of the duty. It may involve moral turpitude, if must be improper or wrong behaviour; unlawful behaviour, willful in character; forbidden act, a transgression of established and definite rule of action or code of conduct but not mere error of judgment, carelessness or negligence in performance of the duty; the act complained of bears forbidden quality or character. Its ambit has to be construed with reference to the subject matter and the context wherein the term occurs, regard being had to the scope of the statute and the public purpose it seeks to serve.

In another Indian case of *Noratanmal Chaurasia v. M.R. Murli Case No.: Appeal (civil) 5476 of 1999* The Supreme Court of India further explored the extent of professional misconduct. In this case the advocate was

appearing as a litigant in the capacity of a respondent and not as an advocate. While the appellant was leaving the court hall along with his advocate Shri S.Vijayranjan, the first respondent kicked him on the knee of his left leg in the court room with an intention to cause injury and further asked him not to appear in the court for evidence. It was held that the advocate was guilty of misconduct even though he wasn't acting in that capacity.

Misconduct has not been defined in the Advocates Act. Misconduct, inter alia, envisages breach of discipline, although it would not be possible to lay down exhaustively as to what would constitute conduct and indiscipline, which, however, is wide enough to include wrongful omission or commission whether done or omitted to be done intentionally or unintentionally. It means, "improper behaviour intentional wrong doing or deliberate violation of a rule of standard or behaviour": Misconduct is said to be a transgression of some established and definite rule of action, where no discretion is left except what necessity may demand; it is a violation of definite law. Since misconduct is incapable of exact definition, instances of misconduct will be determined from context and its effect on the discipline and nature of duty.

### **INSTANCES OF MISCONDUCT.**

To understand issues relating to misconduct we have to rely on decided cases.

1. Abandoning clients case/dereliction
2. Professional negligence
3. Misappropriation of client's funds
4. Improper behaviour before judicial officer
5. Contempt of court
6. Passing false information
7. Giving improper advice
8. Misleading clients in court
9. Not speaking the truth
10. Disowning allegiance to court
11. Moving an application without informing or disclosing that a similar application has been rejected by another authority.
12. Suggesting to bribe court officials.
13. Forcing witness not to tell the truth



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Misbehaviour as misconduct.

In *Re: Vinay Chandra Mishra (The ... vs Unknown)* AIR 1995 SC 2348 on being asked a question, a senior advocate, he started to shout and said that no question could have been put to him. He will get the judge transferred or see that impeachment motion is brought against him in Parliament. He further said that he has turned up many Judges. He created a good scene in the court. He asked the judge to follow the practice of this Court. Held; It is not the question of insulting of a Judge of this institution but it is a matter of institution as a whole. He was found guilty of contempt of court.

Solicitation of profession work

In *Rajendra V. Pai vs Alex Fernandes & Ors Appeal (civil) 6142-6144 of 2001* It appears that there were large scale land acquisition proceedings in the village to which the appellant belongs. There were about 150 villagers whose lands were involved. Some land owned by the family members of the appellant also suffered acquisition. Inasmuch as the appellant was an advocate and also personally interested in defending against the proposed acquisition of land belonging to his family members, the villagers either on their own or on persuasion confided in the appellant, who played a leading role initially in contesting the land acquisition proceedings and later in securing the best feasible quantum of compensation. There were around 150 claimants out of whom three only filed complaints against the appellant which were inquired into by the Disciplinary Committee of the State Bar Council and held proved against the appellant. The substance of the allegations found proved is that the appellant solicited professional work from the villagers; that he settled contingent fee depending on the quantum of compensation awarded to the claimant; and that he identified some claimants in opening a bank account wherein the cheque for the awarded amount of compensation was lodged and then the amount withdrawn which identification was later on found to be false. The appellant, was found guilty of professional misconduct and by order directed his name to be removed from the State roll of advocates. The appellate court confirmed the finding of the committee stating that Undoubtedly, the appellant should not have indulged into prosecuting or defending a litigation in which he had a personal interest in view of his family property being involved. His punishment was reduced to suspension from practice for 7 years.

Lack of instructions;

*Kenya Commercial Bank Limited v Stage Coach Management Ltd CIVIL CASE NO. 45 OF 2012 [2014] eKLR* A preliminary objection was raised that the notice of motion was filed without due authority from the plaintiff company as there was no resolution or no valid resolution of the plaintiff company appointing S. N. Gikera & Ass. Advocates to institute this suit for and on behalf of the plaintiff company.

Held; that in the absence of a board resolution sanctioning the commencement of this action by the company, the company is not before the court at all. For that reason, the preliminary objection succeeds and the action must be struck out with costs, such costs to be borne by the advocates for the plaintiff. Suit dismissed.

Whereas in this case, the costs were awarded to the defendant to be paid by the plaintiffs, ordinarily such costs would be paid by the advocate. This is because it is counsel who professes to have the necessary skill, knowledge

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and judgment and consequently when he fails to exhibit it, the plaintiff should not incur the expenses for counsel's ineptitude.

In *Bugerere Coffee Growers Ltd v Seraduka & Anor.* (1970) EA 147 Held; "When companies authorise the commencement of legal proceedings, a resolution or resolutions have to be passed either at a company or Board of Directors' meeting and recorded in the minutes, but no resolution had been passed authorising the proceedings in this case. The Court held further that where an advocate has brought legal proceedings without authority of the purported plaintiff the applicant becomes personally liable to the defendants for the costs of the action."

In *Kabale Housing Tenants Association Ltd v Kabale Municipal Council* SC Civil Appeal No. 15 of 2013, counsel filed pleadings for the appellant but there was evidence to show that the instructions were withdrawn from him and he had no resolution to show that he was re-instructed. Court held that the application having been filed by counsel without instructions was incompetent. It stated; In cases where the instructions have been withdrawn, counsel cannot claim to have instructions to represent the client. Regulation 3(1) of the Advocates (professional Conduct) Regulations S.I 267-2 A suit brought without instructions is incompetent. See: *Buikwe Coffee Ltd* (1962) EA 327. Counsel must thus appear in court with full instructions and authority from his client. Failure to do so, an advocate will be acting on his own and will not be entitled to any costs. The application having been filed by counsel without instructions, it is, therefore, incompetent in law

Filing a case without instructions is a breach of Reg.2 hence amounts to misconduct. Instructions extend to both contentious and non-contentious matters.

Lack of due diligence; advocate is under a duty to provide the legal services in respect of which he or she is engaged and to do so, competently, diligently and ethically. Failure to do so amounts to misconduct.

Black's law dictionary defines due diligence as The diligence reasonably expected from, and ordinarily exercised by, a person who seeks to satisfy a legal requirement or to discharge an obligation. Failure to exercise due diligence is openly one thing that leads to delivery and inadequate services.

*Chemonges Khamisi and Mosobo v Kapchorwa Referral hospital* HCCS 27 of 2012.

The plaintiff sued Kapchorwa Referral Hospital and a PO was raised that he sued a wrong party as the hospital wasn't a body corporate. Held; that as an officer of court, the plaintiff's counsel acted without due diligence contrary to Rule 2(2) of the Advocates (Professional Conduct) Regulations SI 267-2 which requires Advocates to act diligently in carrying out client instructions. In this plaint it is clear that plaintiff's counsel did not know which party to proceed against and on which specific claim. However even after getting to know that Kapchorwa District Local Government had title to the claimed lands; he took no positive action to rectify the anomaly

*Joseph Kawooya v Uganda* SCCA No. 50 of 1999; Ms. Maureen Owor, counsel for the appellant, (who had been convicted of murder and sentenced to death) in effect argued that the defence counsel, who was assigned by the trial court under legal aid to defend the appellant, exhibited shortcomings, and did not defend the

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appellant diligently. The appellant made remarks at trial to the that his counsel was bent on his losing the case. Court found that at the trial Mr. Nyanzi, who represented the appellant, was casual. He was casual during the tendering in evidence of the charge and caution confession statement. He does not seem to have cared about the identification and admissibility in evidence, as exhibits, of the various items of property.

Held;

Court referred to Lobo vs Salim (1961) EA223 though a civil case, the passage at , page 229 where the E.A. Court of Appeal observed that an advocate who appears for a client in a contested case is retained to advance or defend his client's case. This he must do strictly upon instructions and with scrupulous regard to professional ethics

Court thus held; The defence counsel owes a duty to the client to conduct the defence diligently and in the best interest of the client. That based on the remarks the appellant made at the trial that his counsel was bent on his losing the case, suggests not only that counsel was not diligent, but that he had thus far conducted the defence against the client's interests and probably contrary to instructions.

Professional negligence.

Black's Law Dictionary defines legal malpractice as A lawyer's failure to render professional services with the skill, prudence, and diligence that an ordinary and reasonable lawyer would use under similar circumstances.

Elizabeth Mokgothu Ramonyai v L P Molohe Attorneys High Court of South Africa Case No. 2010/29310

The plaintiff in her particulars of claim alleges that her claim became prescribed in the defendant's care due to his failure to timeously issue and serve summons against the Soweto Supermarket CC and other entities whose negligent conducted rendered them liable for the damages she suffered as a result of her injury and its sequelae. Further the plaintiff alleges that "pursuant to the terms of the defendant's mandate as an attorney specializing in personal injury claims, he was obliged to competently prosecute her claim with reasonable care, skill, and diligence."

Held;

"Professional negligence is the failure by an attorney to act with the competence reasonably expected of ordinary members of the attorney's profession. An attorney must be meticulous, accountable,... He or she must serve his client faithfully and diligently and must not be guilty of any unnecessary delay. He or she must once he or she has undertaken the client's case, not abandon it without lawful reason or excuse. An attorney who fails to explain his or her precise instructions and lays possum invites an adverse inference against him or herself. Where a client's claim prescribes under his or her watch, he or she is guilty of a breach of his or her mandate and duty to his or her client by his or her failure to present countervailing evidence that his or her mandate and instructions were circumscribed and not open ended."

...“An attorney is liable for the consequence of gross negligence if he or she displays a lack of reasonable skill and diligence in the performance of his or her duties in matters within his or her field of practise, expertise or knowledge”

...”An attorney’s liability arises out of contract and his or her exact duty towards his or her client depends on what he or she is employed to do. In the performance of his or her duty or mandate, an attorney holds himself or herself out to his or her clients as possessing the adequate skill, knowledge and learning for the purpose of conducting all business that he or she undertakes. If, therefore, he or she causes loss or damage to his or her client owing to a want of such knowledge as he or she ought to possess, or the want of such care he or she ought to exercise, he or she is guilty of negligence giving rise to an action for damages by his or her client against him or her.”

There is no defence to a claim of negligence where an attorney delayed in issuing summons and if he or she did so after the claim had prescribed, he or she is guilty of the breach of a duty of care in which the plaintiff’s damages loss was foreseeable.

### **ON THE NATURE OF THE ATTORNEY’S DUTIES, HELD;**

The nature of a an attorney’s contractual duties encapsulates: ” the implied obligation to devote attention to the client’s business with the reasonable care and skill to be expected from a normally competent and careful practitioner... that obligation (is not only a compendious or exhaustive definition of all the duties assumed under the contract created by the retainer and its acceptance)... A contract gives rise to a complex of rights and duties of which the duty to exercise reasonable care and skill is but one...To conduct a personal injuries action, presumably the solicitor’s specific duties include;

- (1) obtaining a medical report;
- (2) instructing counsel; and
- (3) issuing the claim within the limitation period.

The solicitor’s failure to carry out some necessary step is normally treated as a breach of the general duty to exercise reasonable care and skill.”

Jacob Mathew vs State Of Punjab & Anor CASE NO.:Appeal (crl.) 144-145 of 2004; this concerned medical negligence whereby a patient was given an oxygen cylinder which was empty and he died. However, the case is relevant in professional negligence generally. It was held;

Negligence has three meanings. They are: (i) a state of mind, in which it is opposed to intention; (ii) careless conduct; and (iii) the breach of duty to take care that is imposed by either common or statute law. All three meanings are applicable in different circumstances but any one of them does not necessarily exclude the other meanings. (Para 1.01)

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The essential components of negligence, as recognized, are three: "duty", "breach" and "resulting damage", that is to say:-

1. the existence of a duty to take care, which is owed by the defendant to the complainant;
2. the failure to attain that standard of care, prescribed by the law, thereby committing a breach of such duty; and
3. damage, which is both causally connected with such breach and recognized by the law, has been suffered by the complainant.

That Deviation from normal practice is not necessarily evidence of negligence. To establish liability on that basis it must be shown (1) that there is a usual and normal practice; (2) that the defendant has not adopted it; and (3) that the course in fact adopted is one no professional man of ordinary skill would have taken had he been acting with ordinary care.

That negligence by professionals in the law of negligence, professionals such as lawyers, doctors, architects and others are included in the category of persons professing some special skill or skilled persons generally. Any task which is required to be performed with a special skill would generally be admitted or undertaken to be performed only if the person possesses the requisite skill for performing that task. Any reasonable man entering into a profession which requires a particular level of learning to be called a professional of that branch, impliedly assures the person dealing with him that the skill which he professes to possess shall be exercised and exercised with reasonable degree of care and caution. He does not assure his client of the result. A lawyer does not tell his client that the client shall win the case in all circumstances. A physician would not assure the patient of full recovery in every case. A surgeon cannot and does not guarantee that the result of surgery would invariably be beneficial, much less to the extent of 100% for the person operated on. The only assurance which such a professional can give or can be understood to have given by implication is that he is possessed of the requisite skill in that branch of profession which he is practising and while undertaking the performance of the task entrusted to him he would be exercising his skill with reasonable competence. This is all what the person approaching the professional can expect. Judged by this standard, a professional may be held liable for negligence on one of two findings: either he was not possessed of the requisite skill which he professed to have possessed, or, he did not exercise, with reasonable competence in the given case, the skill which he did possess. The standard to be applied for judging, whether the person charged has been negligent or not, would be that of an ordinary competent person exercising ordinary skill in that profession. It is not necessary for every professional to possess the highest level of expertise in that branch which he practices.

Breach of undertaking.

Reg 14 of the The Advocates (Professional Conduct) Regulations. SI 267-2

Provides for Undertakings by an advocate.

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An advocate shall not—

- (a) give any undertaking to another advocate or any other person knowing that he or she has no authority or means of satisfying the undertaking; and
- (b) knowingly breach the terms of an undertaking

Breach of undertaking as stated in Reg 14 amounts to professional misconduct, therefore an advocate has a professional duty or obligation to honour his or her undertaking, failure to do so amounts to disgraceful or dishonourable conduct incompatible with the status of an advocate.

The principles guiding professional undertaking were dealt extensively by Warsame, J (as he then was) in *Equip Agencies Limited vs. Credit Bank Limited Nairobi HCCC No. 773 of 2004* when he stated inter alia as follows:

“An undertaking is usually given to ease and smoothen the path of transactions carried out by advocates. It is a convenient method or tool to circumvent the delay and operational difficulties, so that transactions can be easily, properly, smoothly and fastly conducted between advocates. It is a contract between Advocates after an offer and acceptance, with a resulting consideration which follows from one Advocate to another...An undertaking is a promise to do or refrain from doing something or acting in a manner which may prejudice the right of the opposite party. It means it is an unequivocal declaration of intention addressed to someone who reasonably places reliance on it. It can be made by an advocate either personally or through the name of the firm he usually practices under...The breach of professional undertaking can result in lack of mutual or cordial trust between Advocates and invariably puts the administration of justice into disrepute. The advocates by relating together through a professional undertaking are officers of the court; therefore as far as possible it is mandatory for them to respect their words for the benefit of mutual continuity of their respective relationship.

The above case was relied on in *Republic v Advocates Disciplinary Tribunal & 2 others Ex parte Mpuko Nahason Mwiti [2015] eKLR*. The genesis of this matter was that on or about 22nd September, 1998 the Applicant trading as Mwiti & Company Advocates issued a professional undertaking to settle the outstanding loan account balance held with ICDC by Corik Investment Company Limited upon release to them of the title documents and the respective discharge of charge instruments. Consequently, on 24th September, 1998 the title documents and discharge were released to the firm of Mwiti & Company Advocates which documents were received by one Hannah Muriungi Gachuhi from the said firm and who appended her signature on the forwarding letter. However, despite releasing the title documents and the discharges of charge, the said firm did not honour their professional undertaking and on 14th February, 2000 ICDC filed a complaint against the Applicant before the Commission which complaint was later escalated to the Tribunal.

Held; that the failure to honour professional undertaking amounts to a professional misconduct a matter which the Tribunal is legally mandated to entertain

In the same vein, it was held in *Equip Agencies Limited vs. Credit Bank Limited (supra)* that:

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“Failure to honour an undertaking is not only a professional misconduct but a criminal conduct with intent to defraud. An honourable member must not first give an undertaking but when he gives it, he must at all times endeavour to honour the same especially when it is given to a professional colleague.” [Emphasis mine].

It is therefore clear both on the law and on authorities that breach of professional undertaking amounts to a professional misconduct. Since an advocate has a professional duty and or obligation to honour his undertaking, the failure to do so in my view amounts to a “disgraceful or dishonourable conduct incompatible with the status of an advocate” under section 60(1) of the Advocates Act hence constitutes a professional misconduct in which event the Tribunal is empowered to investigate the same.

Breach as referred to in the above case brings us back to Reg 14 and is subject to disciplinary actions.

### **DISCIPLINARY POWERS OF COURT.**

The courts have inherent power to commit an advocate for breach of an undertaking..... S. 17 of the Advocates Act provides that Nothing in this Act shall supersede, lessen or interfere with the jurisdiction of any court, inherent or otherwise, to deal with misconduct or offences by an advocate, or any person entitled to act as such, committed during, or in the course of, or relating to, proceedings before the court.

It would be difficult if not impossible for advocates to carry out their duty to each other and to the public, if an undertaking by advocates becomes unreliable and unenforceable. Failure to honour professional consideration, in the court’s view, amounts to misrepresentation or fraud. The purpose of an undertaking is to achieve a desired goal of mutual trust. In the premises it is incumbent upon advocates to always honour their undertaking unless there is a vitiating factor which the court is bound to consider...”.

The powers of court under S.17 were confirmed in the case of advocate for breach of undertaking on the basis that the court seeks to exercise its punitive and disciplinary power to prevent a breach of duty by an officer of the court, which is quite distinct and separate from the client’s right. Therefore, the court even if it has no right, it has jurisdiction to make an order in exercise of its disciplinary jurisdiction. The purpose of the punitive and disciplinary powers of the court’s jurisdiction over advocate is not for the purpose of enforcing legal rights but for enforcing honourable conduct among them in their standing as officers of the court by virtue of section 57 of the Advocates Act, Chapter 16 Laws of Kenya...It is not the business of the court to oppress an advocate for no reasonable cause. The court is always reluctant to degrade an advocate unless the circumstances show that his conduct is dishonourable as an officer of the court, and it is for that reason that the court would exercise its punitive and disciplinary powers to ensure that advocates conduct themselves in a manner that pleases the eyes of justice.

Shell and 9 ors v Muwema SCCA NO.02 OF 2013

At the hearing of M/A 645/2010 on the 19/11/2010, Mr. Tumusiime stated that he would deal with the preliminary points of law in his submissions in the appeal. Mr. Muwema objected to this mode of proceeding arguing that the court was under obligation to dispose of the preliminary points before proceeding to the appeal. Mulyagonja J ruled that the appeal proceeds on its merits and that the preliminary points of law would

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be dealt with in her judgment. Mr. Muwema made an application that the judge disqualify herself because she was biased. At some point during the submissions the application degenerated into a personal affront in which Mr. Muwema treated the judge like a criminal or witness under cross examination as follows:

“Muwema; ....You are not a proper judicial officer to continue hearing this matter.

Tumusiime; I wish to interject. The manner in which my learned friend is addressing court is not proper. Court; Let him have his day in court. He is a party to the suit, not just counsel.

Muwema; I put it to you that you are not the proper judicial officer to hear this matter.

Court; It seems I am on trial here. Mr.Muwema, are you now cross-examining me?

Muwema; No I am not.(He continues in an accusatory manner.)Even the ruling that you have just read appears to have been pre-written....”

Held; Court agreed with the trial judge that this was an unfortunate occurrence in which a judge’s jurisdiction and competence were challenged in a fully packed court room in an embarrassing manner and without any warning.

Considering the professional misconduct displayed by Mr.Muwema both in the judge’s chamber’s and open court room ,the judge had the power to discipline Mr. Muwema as an advocate under Section 17 of the Advocates Act. She was right to suspend him from her court until disciplinary proceedings before the Law Council were heard to their final conclusion as the procedure stipulates in Sections 20 to 25 The judge, however, should only have suspended Mr. Muwema from appearing in her court for the particular proceedings and not the entire Commercial Court. Suspending Mr. Muwema from appearing in the entire Commercial Court went beyond the judge’s powers. She seems to have done this not as a judge presiding over particular proceedings but as Acting Head of the Commercial Court. That was wrong

Sharing fees with non-lawyers.

An advocate is prohibited from sharing, dividing fees directly or indirectly with non-lawyers. This may include law students and clerks who bring in or refer business to advocates.

Fees declared to be paid contingent to the success of the writ are equally nit permissible because to do so would amount to champerty. An illegal agreement in which a person with no previous interest in a lawsuit finances it with a view to sharing the disputed property if the suit succeeds

The doctrine of champerty refers to an agreement with the plaintiff where an advocate agrees to put in money and resources for consideration of taking a percentage of the claim once successfully resolved. In common law this was on the theory that it encouraged lawsuits. The advocates Act codified the Champerty doctrine and it is outlawed in Uganda.

S. 51 of the Advocates Act provides that (1) An agreement under section 48 or 50 shall—



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- (a) be in writing;
- (b) be signed by the person to be bound by it; and
- (c) contain a certificate signed by a notary public (other than a notary public who is a party to the agreement) to the effect that the person bound by the agreement had explained to him or her the nature of the agreement and appeared to understand the agreement. A copy of the certificate shall be sent to the secretary of the Law Council by prepaid registered post.

Subsection 2 thereof provides that; An agreement under section 48 or 50 shall not be enforceable if any of the requirements of subsection (1) have not been satisfied in relation to the agreement, and any advocate who obtains or seeks to obtain any benefit under any agreement which is unenforceable by virtue of the provisions of this section shall be guilty of professional misconduct.

IN Kituuma Magala & Co Advocates Vs Celtel (U) Ltd, [2001-20005] HCB Vol 3 at 72 Supreme Court held that advocates are free to enter into remuneration agreements with their clients in terms of section 48 and 50 of the Advocates Act as long as these agreements comply with the requirements provided by section 51 of the Act otherwise they are not enforceable.

S. 55 provides that Nothing in section 50, 51, 52, 53 or 54 shall give validity to—

- (a) any purchase or acquisition through other means by an advocate of the interest, or any part of the interest, of his or her client in any suit or other contentious proceedings.
- (b) any agreement by which an advocate retained or employed to prosecute any suit or other contentious proceeding stipulates for payment only in the event of success of that suit or proceeding; or
- (c) any disposition, contract, settlement, conveyance, delivery, dealing or transfer which is under the law relating to bankruptcy invalid against a trustee or creditor in any bankruptcy or composition.

Reg. 26 provides that An advocate shall not enter into any agreement for the sharing of a proportion of the proceeds of a judgment whether by way of percentage or otherwise either as—

- (a) part of or the entire amount of his or her professional fees; or
- (b) in consideration of advancing to a client funds for disbursements.

Shell and 9 Ors v Muwema and Mugerwa Advocates and Solicitors SCCA NO.02 OF 2013

The ten appellants together with forty other companies are Oil importers. On 7th April 2009, Rock Petroleum (U) Ltd. which was represented by Muwema & Mugerwa Advocates, the 1st respondent law firm, obtained a court order to prosecute a representative suit for recovery of excise duty from Uganda Revenue Authority (URA) the 2nd respondent which it had wrongly collected in the sum of Shs. 56,184,191,050/= through an order under the Taxes and Duties (Provisional Collection) Act. This order had expired for the period of 2007/2008. The respondent filed and prosecuted Originating Summons No.009/2009, Rock Petroleum (U) Ltd versus Uganda Revenue Authority and judgment was entered in favour of the oil companies by Mukasa J

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on 20th July 2011 as follows: “The Defendant shall refund to each of the Diesel and Petrol Importers all the moneys collected in excess and the costs of the suit.”

Unknown to the ten appellants, the 1st respondent on 1st September, 2009 the same day OS 009/2009 was filed in the High Court entered into a remuneration agreement with Rock Petroleum (U) Ltd. in which it was stated, *inter alia*, that “1 The Advocates shall be entitled to costs of the suit and an additional fee which is equivalent to 16% of the total proceeds of the clients’ claims or whatever total sum of the claim that the court shall finally award or declare to be due to the clients. “2 In the event the recovery is protracted by the appeal process, advocates shall be entitled to a further 4% of the total claim.”

None of the ten appellants signed or ever saw the agreement until the 1st respondent sought to execute it against them. The first respondent demanded Uganda shillings 8.9 billion from “URA” the second respondent which refused to pay. The 1st respondent filed Miscellaneous Application No. 622/2009 in bid to cause the 2nd respondent to pay Uganda shillings 8.9 billion. The second respondent opposed the application. The appellants filed Miscellaneous Application No.625 of 2010 challenging the agreement between Rock Petroleum (U) Ltd and the 1st respondent claiming that they were not aware of the agreement.

Whether the Remuneration Agreement between the 1st Respondent and Rock Petroleum (U) Ltd was illegal.

Counsel contended that the remuneration agreement offended the law against champerty and maintenance

Held; The remuneration agreement was only signed by Allan Papaok Dokoria, director of Rock Petroleum (U) Ltd. The 10 Appellants did not sign anywhere on this remuneration agreement as provided for in Section 51 (1) (b). This means that the Appellants did not authorize Rock Petroleum (U) Ltd to enter into such an agreement later or intended to be bound by its terms. The agreement thus does not comply with Section 51(1) (b). Each person bound had to appear and satisfy the Notary Public that they understood the nature of the agreement. This was never done at all.

Per Justice Kitumba; Champerty and maintenance are against Public Policy. The argument by counsel for the 1st respondent that champerty and maintenance doctrines are not relevant any more to our legal jurisprudence because of statute law and the strong civil justice system is not plausible. Champerty and maintenance doctrines have been codified in the Advocates Act. It is now not only a matter of common law, but also statute law protecting the public. This court must also take into account the level of civic education of the general population and the numerous complaints made by lay people against advocates’ malpractices.

Having considered that the 1st respondent sought to share in the proceeds of the appellants claim at 16% as per the remuneration agreement, the remuneration agreement is champertous in nature. It is therefore illegal and unenforceable and the 1st respondent cannot seek to enforce it. In *Active Automobile Spares Ltd v Crane Bank Ltd & Rajesh Pakesh* (supra) it was held that no court ought to enforce an illegal contract if the illegality has been brought to its notice, where the person seeking the aid of the court is party to the illegality.

In *Re Trepca Mines Ltd* [1962]3 ALL ER 351, Lord Denning said:

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“The reason why the common law condemns champerty is because of the abuses to which it may give rise. The common law fears that the champertous maintainer might be tempted, for his own personal gain, to inflame the damages, to suppress evidence, or even to suborn witnesses.”

### **Offences under the Advocates Act;**

Contentious and non-contentious matters

In normal practice of an advocate, it is not uncommon for advocates to handle instructions from more than 1 client for non-contentious matters. the challenge comes when its contentious and one client drags the other to court either for non performance of an obligation, then how the advocate deals with such challenge is what creates the confrontation.

Advocate not to prejudice former client. (Reg.4.)

b. Advise the parties that they have an option to settle the contentious issue by direct negotiations in which the lawyer does not participate.

c. There are other ways in which the lawyer evaluates the mischief likely to be caused by insisting on representing one client against the former client as long as his instructions do not prejudice the other.

An advocate shall not accept instructions from any person in respect of a contentious or noncontentious matter if the matter involves a former client and the advocate as a result of acting for the former client is aware of any facts which may be prejudicial to the client in that matter.

If the matter involves former client, the following shall apply;

a. he shall refer the matter to some other lawyer.

In Excell High School and Ors v John Paul Baingana HCMA NO 1019 OF 2014

The Applicants filed this application by Notice of Motion under the provisions of Regulation 4 of the Advocates (Professional Conduct) Regulations S I 267 – 2 for orders to bar the Respondent from representing Hon. Kabakumba Masiko in HCCS No. 105 of 2011 against the Applicants/Plaintiffs on grounds that the Respondent previously served as legal Counsel for the Applicants in a matter involving the sale of three schools to Ms Kabakumba Masiko. Secondly the Respondent had previously served as legal Counsel for the Applicants in other matters. Thirdly during the course of the Respondents service as legal Counsel for the Applicants, the Respondent came across confidential information, which he now seeks to use to the prejudice of the Applicants in HCCS 105/2011. Fourthly the Respondents continued representation of the Defendant in HCCS No. 105/2011 is prejudicial to the Applicants.

Held; regulation 4 of the Advocates (Professional Conduct) Regulations clearly envisages a bar to the acceptance of instructions. It places the duty on the advocate not to accept instructions in respect of a contentious or noncontentious matter if it involves a former client. However the advocate must be aware of a

matter which is prejudicial to the former client or even aware of confidential information which should not be divulged.

However court found that the Respondent accepted instructions even when he and the Applicants knew that the dispute arose out of the noncontentious transaction of sale of property which later became contentious. In the premises having accepted instructions without objection and having taken significant steps in the prosecution of the defence to the extent that the issues were narrowed down and partial judgment was entered, the Applicants waived their right to object to the conduct of the defence of the Defendant by the Respondent. They are also barred by the doctrine of estoppels under section 114 of the Evidence Act Cap 6 from objecting to the Defendant.

### **Advertising.**

Reg 24. Advocate's nameplate or signboard.

(1) An advocate may erect a plate or signboard of not more than 36 centimetres by 25.5 centimetres in size containing the word "advocate", indicating his or her name, place of business, professional qualifications, including degrees, and where applicable, the fact that he or she is a notary public or commissioner for oaths.

2) Notwithstanding sub regulation (1) of this regulation, a nameplate or signboard shall, in the opinion of the Law Council, be sober in design.

(3) No advocate shall carry on any practice under a firm name consisting solely or partly of the name of a partner who has ceased to practice as an advocate.

(4) An advocate or a firm of advocates affected by sub regulation (3) of this regulation shall be allowed five years from the date of the change in the composition of the firm, in which to effect the required change in the firm name.

(5) Notwithstanding sub regulation (1) of this regulation, no advocate shall include on his or her nameplate, signboard or letterhead any nonlegal professional qualifications or appointments in any public body whether the appointments are present or past.

Sec. 74(f) of the Act states:

No advocate shall advertise in relation to his or her professional business, except as may be permitted by regulations made by the Law Council.

Reg. 25. Advocate not to advertise his or her name, etc.

(1) An advocate shall not allow his or her name or the fact that he or she is an advocate to be used in any commercial advertisement.

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(2) An advocate shall not cause his or her name or the name of his or her firm or the fact that he or she is an advocate to be inserted in heavy or distinctive type, in any directory or guide and, in particular, a telephone directory.

(3) An advocate shall not cause or allow his or her name to be inserted in any classified or trade directory or section of such directory.

Read further; Legal Ethics and Professionalism; A Handbook for Uganda pg. 198

Reg 31. Offences under the Advocates Act, etc

(1) Any act or omission of the advocate, which is an offence under the Advocates Act, shall be professional misconduct for the purposes of these Regulations.

(2) Any conduct of an advocate, which in the opinion of the Disciplinary Committee, whether the conduct occurs in the practice of the advocate's profession or otherwise, is unbecoming of an advocate shall be a professional misconduct for the purposes of these Regulations

### **DISCIPLINARY OFFENCES BY ADVOCATES.**

74. Disciplinary offences by advocates.

(1) No advocate shall—

(a) take instructions in any case except from the party on whose behalf he or she is retained or some person who is the recognized agent of that party within the meaning of the Civil Procedure Act or an Act amending or replacing that Act or some servant, relation or friend authorised by the party to give the instructions;

(b) mislead or allow any court or officer of any court to be misled;

(c) tender or give or consent to the retention out of any fee paid or payable to him or her for his or her services of any gratuity for procuring or having procured the employment in any legal business of himself or herself or any other advocate;

(d) directly or indirectly procure or attempt to procure the employment of himself or herself or his or her partner or assistant as an advocate, through or by the intervention of any person to whom remuneration for obtaining such employment has been given by him or her, or agreed or promised to be so given;

(e) accept any employment in any legal business through a tout or employ a tout as defined in section 75;

(f) advertise himself or herself in any way in relation to his or her profession or business as an advocate, except so far as may be necessary to mark his or her office or to give his or her address to persons having business communications or dealings with him or her;

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(g) directly or indirectly hold himself or herself out or permit himself or herself to be held out, whether by name or otherwise, as being prepared to undertake professional business for any fee or consideration which shall be less than the scale of charges, if any, for the time being in force;

(h) agree with his or her client either before, during or after the conduct of any non-contentious professional business to undertake such business for any fee or consideration whatsoever that shall be less than that set out in the scale of charges, if any, for the time being in force;

In *Shell v Muwema supra*

Held; Section 74 of the advocates Act provides for disciplinary offences by advocates. Section 74(1) (i) provides for misleading or deceiving a client in any respect material to the client. Mr. Muwema made the matter seem so big and complex to the client as indicated in the fee agreement to the extent that there were necessary statutory and contingent expenses to be made so as to pursue the matter which amounts were never clearly explained to the clients.

Section 74(1)(j) provides for contempt of court which was manifest by Mr. Muwema loudly accusing the judge of bias in a fully packed court room yet there is a clear procedure to be followed in case a judge is to recuse him/herself from hearing a matter.

Res Sub Judice

Sub judice is a Latin word which means ‘under judgment’ or ‘under judicial consideration.’ It is a common law rule that prohibits the publication of matters before court. The rule applies to parties to the case, their lawyers and the entire public. However, the rule allows fair and accurate reporting by the media on the factual content of the matter provided in doing so they do not prejudge it. Violation of the rule amounts to contempt of court. The sub judice rule reinforces the right to a fair hearing as provided for in Article 28(1) of the Constitution of the Republic of Uganda.

Reg 20. Provides An advocate shall not make announcements or comments to newspapers or any other news media, including radio and television, concerning any pending, anticipated or current litigation in which he or she is or is not involved, whether in a professional or personal capacity. The exception, however, is that advocates can make such comments in an educational or academic context, in line with academic freedom in institutions of learning as stipulated in Art. 29 (1) (b) of the Constitution of the Republic of Uganda.

## DISCIPLINARY MEASURES

Section 2(1) of the Advocates Act cap 267 as amended, provides for the establishment of the law council and it shall consist of a judge, ULS president, LDC director, MUK school of law head of department of law, 2

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practising advocates elected by ULS and one officer with legal qualifications in service of the government appointed by the Attorney general.

Section 3 of the advocates act cap 267 as amended provides for the functions of the law council

- a) To exercise general supervision and control over professional legal education in Uganda
- b) To approve courses of study and to provide for the conduct of qualifying examinations
- c) To advise and make recommendations to the government on matters relating to the profession of advocates.
- d) To exercise disciplinary control over advocates and clerks through the disciplinary committee
- e) To exercise general supervision and control over the provision of legal aid and advice to indigent persons.

Section 17 of the Advocates act cap 267 as amended provides for the powers of the court that is the disciplinary powers of the courts over advocates or any persons. In the case of Shell (u) ltd and 9 others v muwema & mugerwa advocates and solicitors

Section 18 (1) of the advocates act cap 267 as amended, the disciplinary committee is established and it shall consist of aa member of the law council (with legal qualifications in service of the government appointed by the attorney general ) and four other members of the law council other than the chairperson.

Section 18(3) of the advocates act cap 267 as amended, the chairperson of the disciplinary committee to be appointed by the law council.

Section 18(5) of the advocates act cap 267 as amended, the quorum of the disciplinary committee shall be 3 and decisions to be by majority of the votes.

Section 18(7) of the advocates act cap 267 as amended, the secretary to the law council shall be the secretary to the disciplinary committee although the committee can appoint any fit and proper person to act as secretary.

### **DISCIPLINARY PROCEDURE OF ADVOCATES.**

- a) A Complaint against an advocate of professional misconduct may be made to the DC by law council or any person., as per section 20(1) of the advocates act cap 267
- b) The secretary to the D.C shall refer to the D.C as soon as practicable. (Section 20(2) cap 267 as amended)
- c) The D.C shall furnish a copy of complaint plus any affidavit and any other relevant document to the advocate not less than 7 days before the date fixed for hearing. (Section 20(3) cap 267 as amended)
- d) The D.C shall fix a date for the hearing of the complaint. (Section 20(2) cap 267 as amended)

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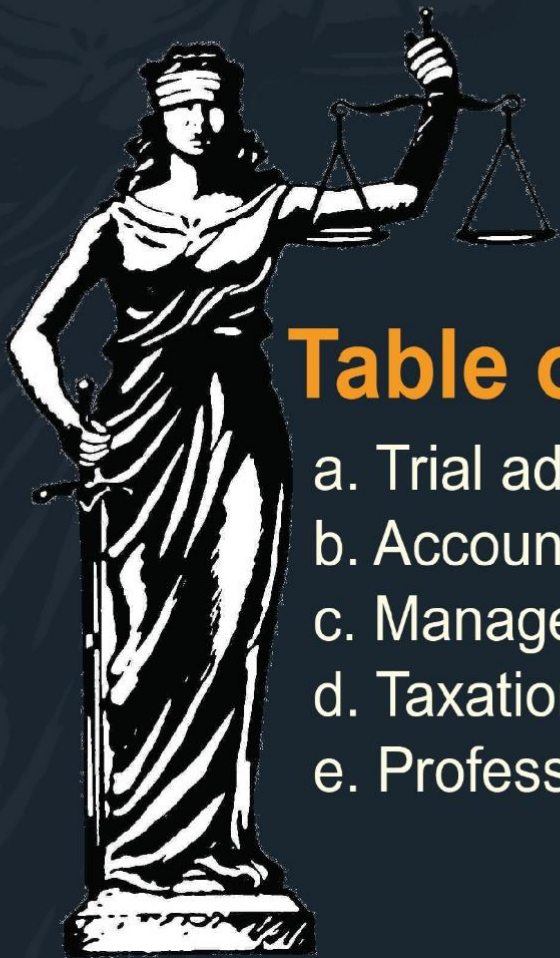
- e) At the hearing, a party is entitled to be represented by an advocate. (Section 19(2) cap 267 as amended)
- f) After hearing the complainant and the advocate, the D.C may dismiss the complaint or if a case of professional conduct has been made out, it may make the following order. (Section 20(4) cap 267 as amended)
  - That the advocate be admonished
  - That the advocate be suspended from practice for a maximum period of 2 years
  - That the name of the advocate be struck off the roll
  - That the advocate pay a fine or compensation.

The D.C may make an order as to payment of any costs, witness expenses or expenses of the committee in connection with the hearing (sec.20(5) cap 267)

Any order of the D.C shall be executable as if it were a decree of the high court. (Section 20(8) cap 267 as amended)

- g) The registrar of the high court shall inform the secretary ULS of making of any entry in respect of the advocate on the roll and of the removal from or the striking off the roll. ( sec.30(1) cap 267 as amended)
- h) The registrar of the high court shall cause to be published in the gazette a notice of the final order of the D.C (Section 30 (2) of the advocates act cap 267)
- i) Where possible, an advocate can appeal against the decision of the D.C in the high court with in 14 days by giving notice of appeal to the Registrar. The advocate shall also file a memorandum of appeal within 30 days. ( section 22(1) of the advocates act cap 267)
  - Powers of the high court shall be exercised by a bench of 3 judges of the high court. (section 26(1) of the advocates act cap 267 as amended)





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