OWOLABI 'S PROFESSIONAL ETHICS AND SKILLS NOTES 2016/2017 SESSION

WEEK 3

OVERVIEW OF THE COURSE

PRE CLASS: Professional Ethics and Skills formerly known as law in practice in the Nigerian Law School is a basic course required in virtually all the jurisdictions of the world in order to be qualified as a legal practitioner. The course is generally divided into four parts:

- **Part A-** PROFESSIONAL ETHICS AND RESPONSIBILITIES OF A LAWYER (it includes History of legal profession and regulation/ Regulatory bodies in the legal profession)
- **PART B-** LAW OFFICE MANAGEMENT (Establishment of law firm/Classification and organization)
- **PART C-** LEGAL PRACTITIONERS ACCOUNT AND REMUNERATION
- **PART D-** ALTERNATIVE DISPUTE RESOLUTION TECHNIQUES, COMMUNICATION AND DRAFTING SKILLS etc.

OVERVIEW OF THE PRINCIPAL APPLICABLE LAWS/RULES

RULES OF PROFESSIONAL CONDUCT FOR LEGAL PRACTITIONERS, 2007 - AN OVERVIEW

It is a subsidiary legislation to the Legal Practitioners' Act, CAP L11, LFN 2004 and it is binding on all lawyers. It was introduced to regulate the conduct/ affairs of legal practitioners in Nigeria. The authority to make the rule is within the powers of the Attorney General of the Federation. Carefully perusing the rules there are 57 rules divided into 7 parts viz:

- A -PRACTICE AS A LEGAL PRACTITIONER (Rules 1-13): Points that personally affect a lawyer in the course of his practice.
- B- RELATION WITH CLIENTS: (RULES 14-25):
- PART C: RELATIONSHIP WITH OTHER LAWYERS (Rules 26-29) : Lawyers as comrades
- D- RELATION WITH COURTS (Rules 30-38)
- E- IMPROPER ATTRACTION OF BUSINESS: (Rules- 39-47)
- F- REMUNERATION AND FEE: (Rules 48-54)
- G- MISCELLANEOUS: RULES 55-57

HISTORY OF LEGAL PROFESSION IN NIGERIA

Prior to the intrusion of the colonial masters, disputes were resolved via local methods with the kings and the chiefs in various localities. With the coming of the colonial masters, commerce was expanded and hence the introduction of the European legal system into the Nigerian traditional system.

PERIODS

1876-1914

THE CATEGORIES OF LAWYERS IN THIS ERA ARE:

- **Professionally qualified lawyers**

Must have kept 12 dinner terms

Called to any of the Inns of Court

They learnt through correspondence (Attending lectures was not compulsory)

They must be qualified as barristers in England, Scotland and Ireland

- **Articled lawyers**

Must have served in the law office of a practicing lawyer in Nigeria or Gold Cost

Must have served there for five years

Must pass the exams set by the CJN

- **Self-taught or Local Attorneys.**

Fit and proper in Nigeria

Passed examination conducted by the CJN (test general knowledge of law in England and other colonies)

Practicing License for six month renewable for same period.

In 1908 licenses ceased to be given to local attorneys on the complaint of the qualified lawyers premised on the ground that, there are already in place many qualified lawyers. It ceased on the application of Mr. Osho Davies (he made application in 1913 and was told that the CJN no longer exercises such discretion).

1914- 1962

The new Supreme Court civil procedure rules of 1945 change the qualification of those that could practice as lawyers:

- Person qualified to practice law in England, Ireland or Scotland and have practice in any of the British colony or protectorate for at least a period of two years
- Person qualified and has practice as barrister or solicitor in one of the Inns of the British colony for at least a period of two years.
- Persons that studied in the law firm of a legal practitioner(who practice as a barrister or solicitor) that have practice for five years and must have done such for a period of at least one years
- Person that studied in Nigeria and studied for two years under a Nigerian law of 10 years practice.
- Have also practiced as a barrister or solicitor in the courts of a British colony for at least two years
- Read in the office of a practicing Barrister or solicitor of 5 years and above for a period of one year
- Practiced in the court of the country of his call to bar for two years
- Read in Nigeria in the chambers of a practicing lawyer of more than 10 years standing for at least a period of 2 years.

CHALLENGES OF LAWYERS BEFORE 1962

- Trained versioned English law Legal system (not conversant with customary law of the Nigerian citizen)
- Practice as Barristers and solicitors though the training they received was in one of the two aspects.
- Federal systems
- Conversant with the English constitutional law

RECOMMENDATIONS OF THE UNSWORTH COMMITTEE

RESPONSIBILITIES

- Legal education and admission in Nigeria
- Right of Audience before the court
- Legal system
- NLS in Lagos
- Degree of law
- Faculty of law
- Establishment of CLE

Most of the recommendations were adopted and hence LPA and LEA drafted.

1962 till date

- Entitled to practice generally
- Those called to Bar after presentation of the qualifying certificate at SC

Those enrolled by virtue of the regulation made by the A.G of the Federation.

CONDITION FOR QUALIFYING CERTIFICATE

Citizen (Any country)

Pass exam of the NLS,

Attendance within the time stipulated for the Bar II program (studentship at the NLS lasted till the time of issuance of qualifying certificate)

Fit and proper and of good character - ***OKONJO V CLE (1979)***

Three dinning terms

CONDITIONS BY VIRTUE OF REGULATION—S. 7(2) LPA

- Non Nigeria citizen
- A certificate from A.G in conjunction with the Bar council
- Show that he is from a country with similar legal system to Nigerian law
- He presents the certificate to the CJN
- He must be of good character and fit and proper
- Corresponding agreement form the country of practice
- He must be a member of the OAU (AU). LPA does not state such condition
- Total exemption

CONDITIONS TO BE FULFILLED

Nigerian

Graduated from a Nigeria University

Pass the necessary courses required by the CLE
Have sufficient skills
Due to circumstances beyond his control he was not able to attend the NLS
A certificate of exemption will be issued.

- Partial Exemption (Exempted from Bar part I)

Graduates from common law jurisdictions that thought for five years and above
Graduates from non-common jurisdictions that have thought in Nigerian university for not less than 10 years.

- Call to the Bar (body of benchers)

- Qualifying certificate (produce it to the body benchers for a call to bar certificate)
- Call to bar certificate
- Enrolment of name on the supreme court roll by the registrar of the supreme court on the condition that the practicing fee has been paid
- Fit and proper and of good conduct
- Third dinning term with the body of bencher

- By virtue of office.

- Legal practitioner that works in the ministry of justice)
e.g A.G, DPP, Solicitor General and those that work in their departments
- Law officers in legal departments of corporations or government ministries
Non lawyers working in legal capacities (now otiose)

- By warrant (those that practice for a specified proceedings)

- Foreigners that needs to appear for a special proceeding in Nigeria
- Must be an advocate in his country of practice
- Similar legal systems
- That their country affords the same opportunity to Nigerians.
- An application to the CJN to appear for the purpose of that matter alone even in cases of Appeal.
- Warrant lapse for the purpose of that transaction
- He is limited within the confine of a barrister and cannot act as a solicitor
- He is precluded from other forms of transaction
- The warrant does not oust any immigration law. See ***AWOLOWO V MINISTER Of INTERNAL AFFAIRS.***

EXCLUSIVE RIGHTS OF A LEGAL PRACTITIONER

- Right to audience before any court in Nigeria subject to having paid your practising fee s. 8 LPA
- Right to be appointed as AG, commissioner/minister of justice
- Right to be appointed as the Director-General Of the Legal Aid Council see section 4 (2) Legal Aid Act, 2011
- Right to be appointed as justice
- Right to be conferred SAN
- Right to prepare any legal document in contemplation of reward. See Rule 3 RPC and s. 22(1)(d) LPA
- Right to prepare court processes
- Right to apply for probate and LOA
- Right to fill and sign Form CAC 4 in incorporation of a company
- Right to be appointed as a Notary public

RESTRICTION ON EXCLUSIVE RIGHT

- Payment of a Annual Practising fees—R. 9 RPC
- Engaging in business subject to R. 7 RPC
- Annual practising certificate—R. 12 RPC
- Retired Judicial Officers—R.6 RPC—he can represent himself personally in court
- Lawyers in salaried employment—R. 8 RPC
- SAN cannot appear before Magistrate Court

- SAN cannot practice as solicitor

OWOLABI 'S PROFESSIONAL ETHICS AND SKILLS NOTES 2016/2017 SESSION

WEEK FOUR 4

REGULATORY BODIES IN THE LEGAL PROFESSION

There are about eight regulatory bodies in the legal profession… The bodies control and regulate the activities of legal profession in Nigeria.

BODY OF BENCHER (SECTION 3 LPA AS AMENDED)

It is a statutory body established by the legal practitioners Act in 1962. It is a body of legal practitioners of the highest distinction in the legal profession in Nigeria.

MEMBERSHIP OF THE BODY OF BENCHERS S. 3 LPA AS AMENDED

1. CJN and all the Justices of the supreme court
2. The PCA
3. AGF
4. Presiding justices of the court of Appeal divisions
5. Chief justices of the FHC and NIC
6. Chief Justice of the Federal Capital Territory
7. A.G of the states (in absence of the A.G, solicitor general)
8. President NBA
9. C.J. of states
10. Chairman of CLE
11. 30 legal practitioners. 30 Legal practitioners nominated by the NBA and 10 by the body of benchers of not less than 15 years post call
12. Honorary members. They can be appointed by the body of benchers from time to time or members who voluntarily resign. These people are called supernumerary members (they enjoy all the rights of the members of the body of benchers save they cannot hold any office).

CESSATION OF MEMBERSHIP

- A person may cease to be a member of the body of benchers if:

a. He voluntarily resigns;
b. He cease to hold the office by virtue of which he was appointed;
c. He is removed as a result of any misconduct. See 3. LPA as amended

- The quorum for the meeting of the body of benchers shall be ten members. Section 3 LPA
- The body of benchers is a juristic person that can sue and be sued in its name. Section 3.LPA.

LIFE MEMBERSHIP

- Statutory life membership: it is conferred upon them through the provision of a statute. The CJN is a life member upon his appointment as a CJN
- By Appointment: members of the body of benchers can be appointed as life members. The body of benchers is empowered by the provision of the LPA to make such conferment.

Right of life members and other members of the body of benchers

- Right to seat at the inner bar or front seat in any court in Nigeria
- Right to mention their cases slated for mention or motion out of turn. It is not applicable to cases slated for hearing.

FUNCTIONS OF THE BODY OF BENCHER

- They are responsible for calling aspirant to the Nigerian bar
- They exercise disciplinary measures/ jurisdiction over legal practitioner/ aspirant to the bar
- They prescribe call fees to be paid by aspirants to the bar.
- They prescribe the dinning terms to be observed by aspirant to bar.
- Issue certificate of call to bar to the new wig
- They appoint care take committee to run the affairs of the Nigerian bar association where circumstances demand.
- Ensures that aspirant to the bar are fit and proper by sponsoring aspirant to the bar.

LEGAL PRACTITIONERS DISCIPLINARY COMMITTEE (LPDC)

The LPDC was established by the LPA of 1962. It is a committee of the body of benchers that regulates and determines charges brought against legal practitioners in Nigeria.

Membership

- Chairman who shall be either the AGF
- The AGS
- 12 LPs appointed by the BOB on the nomination of the NBA

FUNCTIONS

- Determine and consider complaints brought against L.P
- Prescribe the nature of punishment to the registrar of the SC to be given to the LP who have been found guilty.
- Orders restoration of name of LP previously struck out or the cancellation of a suspension of a legal practitioner.

COUNCIL OF LEGAL EDUCATION (CLE)

Set up by the CLE Act of 196. It is the body set up to manage the affairs of legal education in Nigeria.

MEMBERSHIP

- Chairman appointed by the president of the Federation on the recommendation of the AGF
- Attorneys Generals of states and where there non solicitors general
- A representative of the federal ministry of justice to be appointed by the AGF
- Deans of various approved law faculties in the country
- The President of the NBA
- Fifteen legal practitioners of not less than ten years post call who shall be appointed or elected by the NBA
- DG of NLS
- Two authors of published learned works in the field of law to be appointed the AGF.

FUNCTIONS

- They educate persons seeking to become members of the LP
- They issue qualifying certificate to the graduate of the NLS
- They are responsible for continuing legal education in Nigeria.
- Carry out other incidental functions to wit:

They accredit law faculty

They did selection process of lecturers to be appointed to the NLS

They give quota system to universities

They prescribe code of conduct in the NLS

LEGAL PRACTITIONERS PRIVILEGES COMMITTEE (LPPC)

This was established by the LPA.

Membership

- The CJN (chairman)
- AGF
- A JSC
- The PCA
- 5 CJ of states
- CJ FHC
- 5 Legal practitioner who are SANs

FUNCTIONS OF LPPC

- They confer right of the SAN
- Make rules relating to the function of the SAN
- Withdraw the right of SAN

Guidelines for the conferment of the right of the SAN

- 10 years post call standing
- Be in active legal practice in Nigeria
- 200,000 non-refundable fee now 300,000

- 17 **contested** cases handled by him. 3 by SC, 6 by CA, 8 by High court or 6 judgment from the S. 14(3)(c) of the GFCS
- The application shall include ten judges of a superior court before whom you have appear. Three whom may be selected to give confidential references of the applicant
- They must have contributed the cause of law through a scholarly article
- A well-furnished law office or be a partner with one
- Must have paid ten consistence practicing fees
- Evidence of payment of practicing fee
- Evidence of payment of income tax for three years
- Evidence of pro bono services to indigent citizens
- As an academia, you must show evidence of 20 scholarly materials/ works.
- The candidate must be fit and proper not given to hard drug or alcohol and not a street fighter.

DISQUALIFICATION OF AN APPLICANT

- He exhibit bad behaviour whether in or out of court
- He has been involved in drug, alcohol or hard substance
- He has shown evidence of moral depravity unacceptable to the society.
- He has embezzled or mismanage clients' funds.
- He has given to bribe
- He advertise himself or jingle
- Where he touts for brief

WITHDRAWAL OF RANK

- If found guilty of a misconduct by LPDC
- If he is convicted by a court of law for offence incompatible with the status of the rank
- If he supply false information for the conferment of the rank
- Where he depict a character incompatible with the rank

PRIVILEGES OF SAN

- Right to seat at the inner bar or front role of the court
- Right to mention their cases slated for motion or mention
- Right to be addressed as SAN
- Right to wear silk robe.

NIGERIA BAR ASSOCIATION

This is an association of all legal practitioners in Nigeria.

Membership is upon enrolment as a legal practitioner at the Supreme Court.

- Issue annual practicing certificate
- They keep data base of all legal practitioners in Nigeria
- They promote legal education through continuing legal education.
- They investigate charges brought against LPs

They are juridical entity that cannot be sue or sue by its name. see Fawehimi v NBA (No2) (1989) 2NSCC 43.

Membership of the General Council of the NBA

- AGF(chairman)
- AG states
- 20 Legal practitioners elected by the NBA at least 7 of whom shall not be less than 10 years post call standing.

Functions of General Council of the NBA

- Make and revise the RPC
- Makes rules of Accounts to be kept by legal practitioners with the approval of the AGF.

LEGAL PRACTITIONERS REMUNERATION COMMITTEE (LPRC)

MEMBERSHIP

- AGF (chairman74I)
- AG states
- President of the NBA

- 3 Legal practitioners.

FUNCTIONS

-make orders relating to the fees to be charged by the legal practitioners

NATIONAL JUDICIAL COUNCIL

The NJC is one the federal executive bodies created by virtue of section 153 of the 1999 CFRN as amended.

FUNCTIONs

- Advise president of the FRN and governors on issues relating to the judiciary
- They discipline members of the judiciary
- The appoint and nominate executive members of the judiciary

TABLE OR ORDER OF PRECEDENT IN COURT

- The AGF
- AG state
- SAN in order of their seniority
- Persons authorized to practice for the purpose of their office. (legal officers in AGs office)
- Person in whose name are on the roll in order of their seniority
- Person authorized to practice by warrant.

OWOLABI 'S PROFESSIONAL ETHICS AND SKILLS NOTES 2016/2017 SESSION

WEEK FIVE 5

INTERVIEWING AND COUNSELLING SKILL

Communication skill is important

- Process of sending, receiving, and carrying out instructions.
- **Verbal**
- **Written**
- Verbal communication can be;
- Verbal-rules of use of proper, positive words; no legal jargon; avoid "but" "well" etc.
- Vocal- speed, pitch, volume, resonance, etc
- Visual- body language, such as facial expression, eye contact, gesture, touch, etc.

Types of questions during interview

- Open question: questions given wide latitude to client to give an elaborate answer. Usually in form of expressing himself. It does not limit the response expected from the client
- Closed question: question that limits the client's response.

The two forms of question is usually interchanged in an interview depending on the type of information in which the lawyer intends to elicit.

- Interviewing and counselling skills are of utmost importance in the legal profession:

1. The lawyer obtains relevant information about the subject matter of his instruction during the interview.
2. The interview session enables the client to state the remedy or solution he seeks to a legal challenges or problems.
3. Thus the interview provides the platform for the client to give his instruction in respect of the matter
4. The interview also give the lawyer an opportunity to counsel…..

- An interview is therefore the platform, or the means of communication between a (prospective) client and his lawyer, the purpose of such interview is to enable the lawyer to elicit relevant information on the subject matter of the interview and to obtain the clients instruction in respect thereof.
- Where may an interview take place?
- - see R.22 RPC. Not at the client's place, except;
- - special circumstances
- -e.g old client who is immobile, about to pass away and willing to make his last will

STAGES OF INTERVIEW

- There are different views on the number of an interview should be divided
- - thus the Avrom Sheer 3 stages model, which consist of:

■ Listening
■ Questioning and
■ Advising

TALKING MAINLY DONE BY THE CLIENT

I. Welcome, greet, have him/her seated
II. Opening question to elicit the narration of the story
III. The lawyer listens without interrupting the flow of information from the client. He obtains basic/ background information on the subject matter.

■ Questioning stage

IV. Lawyer fill in the gaps, omission, ambiguous statements, by information obtained from client through questions that are specifically directed. (close question)
V. The lawyer seizes the opportunity to summarize his impression of the information divulge ……
VI. The lawyer take notes of the interview. Especially at the questioning and advising stages.

■ Advising stage

VII. The lawyer at this stage plays the dominant role. He gives or announces his advice and plan of action based on the facts supplied by the client. He also at this stage discusses the ---is of funds needed from the proposed plan of action this should include the matter of the professional fee of the lawyer.
VIII. The lawyers repeats the advice and the plan of action, asks for the agreement or disapproval of the clients to the plan.

IX. The lawyer state the follow up actions on the part of the client
X. He also enumerates the follow up actions on his own part
XI. The date of the next contact between the lawyer and the clients is fixed
XII. Ask the client if there is 'any other business'
XIII. The interview is ended, see the client off by bidding him goodbye.

CHAY AND SMITH'S 7-STAGE MODEL

1. PREPARATION STAGE
- Identify the venue, the lawyer takes with relevant materials

2. STARTING THE INTERVIEW
- Greetings, know the mode of address
- Get the basic information, name, address, phone email and email.
- Open questions, but sometimes closed questions

3. AGREEMENT ON THE SHARED UNDERSTANDING OF THE CLIENT'S NEEDS BASED ON THE FACTS;
- Some empathy needed
- Probe to discover the real concern of the client

4. IDENTIFYING AND EVALUATING THE ALTERNATIVE COURSES OF ACTIONS LEADING TO GOOD DECISION MAKING ON THE PART OF THE CLIENT.
5. TAKE SPECIFIC INSTRUCTION
6. CLOSING AND CLARIFICATION OF RELATIONSHIP
7. REFLECTION.

DUTIES OF COUNSEL TO CLIENT

- EXPECTATION FROM COUNSEL
- Dedication to clients matter
- Duty to accept brief
- Representing client within the bounds of law
- Representing client competently
- Professional negligence by lawyers

DUTIES OF COUNSEL TO CLIENT

Once counsel elects to represent a client, he must doso with utmost dedication. R 14 (1) RPC

- He must show diligence in dealing with clients matter 14 [2]
- He must be ready to take the matter form start to conclusion 14 [4]
- Devolution and dedication must be visible in the pursuit of a client's case 14 [1] RPC
- Duty to accept briefs (as a general rule)

Query: what is a cab rank? A place where cabs are packed and passengers enters any of the cab on the role and there is no preference for the driver to pick passengers of his choice. Hence a lawyer is not given the liberty to pick up clients case at his own preference. He is duty bound to accept all briefs.

EXCEPTIONS:

- Briefs against religious believe
- Personal interest
- Conflict of interest.
- Where the lawyer will be called as a witness in the case. (for the sake of examination in chief)
- When the subject matter of the brief is not in the tandem with the lawyers area of specialization.
- Refusal of clients to pay professional fee
- He can only accept brief in an area he professes to practice.
- Where the lawyer is a party to the case

■ Duty to take instructions.

Where does the lawyer take the instructions of the client? In the chamber

Are there exception? See R 22

- Where he is sick

- Old persons
- By virtue of the office of the client
- Other circumstance. Like a government official with a very busy schedule.
- In a restaurant. The main intent is for the lawyer not to be client's servant.

■ Duty to take full instructions.

- Counsel must ensure that he is clear on the instructions given to him so that he can act appropriately.

■ Duty to represent the client competently within the bound of the law.

- The lawyer has accepted brief and must therefore do everything possible to achieve the best for client- true or false? Discuss. R15[2][a][b] and [3][i] and [j]; 15[2] RPC
- What shall a lawyer do where he finds that the duty to his client clashes with his duty to the court? Who does he owe the first duty to? Court . R 1& 30 RPC Rondel V Worsely [1966] 3 WLR 950
- Conflict of interest:
- How would you define conflict of interest? WHEN THERE IS CLASH OF INTEREST BETWEEN THE LAWYER AND THE CLIENT
- In relation to a lawyer's duties, what is the need for the consideration? R17 RPC

■ Lawyer Ben has been asked by Cecilia to assist in acquiring a piece of property in the Ikoyi residential area. Ben's family has a property that they are willing to dispose of in the same vicinity. Can Ben present this property to Cecilia? R17 (2) 17(4)

He can offer the property to Cecilia only if he discloses his interest in the property to Cecilia over the property and she consented.

The Nature of Property the lawyer has is the nature of The Client Wants, from this there is clash of interest, therefore the lawyer should disclose conflict of interest, and it is left for the client for the client to accept or reject.

■ **DUTY OF DISCLOSURE**

- Is there any difference in a lawyer acquiring proprietary interest in the subject matter of the case he is handling and acquiring lien over same? Yes. Lien (equitable interest) ensues in situation where you hold on to the title to the property for the …
- A lawyer is not is not allowed to hold proprietary interest
- Can a lawyer having acted for a client in a particular matter elected to represent another party in the same matter? R 49 (3). No, it is a clear case of conflict of interest. He cannot represent the party.
- What about appearing in a matter for a client that is suing you his former client? See Onigbongbo Community V Minister of Lagos Affairs (1972) 2 UILR 24. There must be full disclosure and the consent of the client will only qualify his appearance.
- The client says no the lawyer has to withdraw

PROFESSIONAL NEGLIGENCE BY LAWYERS

A lawyer must give utmost devotion to the cause of his client. Definition of the phrase? Deviation from the rule of PC. It is an act or omission which is far below the conduct expect of a lawyer and is at the detriment of the client.

- Where a lawyer breached his duty of care, whether as an act or omission in the course of carrying out the job of his client, causing the latter to suffer damages. It is a conduct carried out carelessly or recklessly.
- Negligence by client may amount to professional misconduct R 14 (5)

WHY MUST A LAWYER BE HELD RESPONSIBLE FOR PROFESSIONAL NEGLIGENCE?

- To serve as a deterrent to other lawyers of
- Because the lawyer owes a duty of care to the client
- Negligence by client may amount in professional misconduct. R 14(5)

NATURE

- What is the relevant of this phrase in the scheme of legal practice.
- A lawyer is bound to exhibit professional competence in the course of handling matters for clients. However as humankinds, errors are bound to happen
- The degree of care to be shown by the lawyer would depend on the kind of brief and other warranting circumstances.
- However, the extent of the negligence must be one that is gross rather than ordinary. Bello V Raji.

ON PROFESSIONAL NEGLIGENCE: see Section S 9 LPA

Generally, all lawyers are professionally liable for negligence 9(1). Strictly liability:

Generally in Pro bono services does not exclude lawyers liability for negligence, however, a clause may be included in the agreement or contract excluding or limiting liability of lawyers. (2)

Lawyers are not liable in cases of proceedings before the court or tribunal. 9 (3):

In the face of the court:

AREAS OF PRACTICE WHERE NEGLIGENCE MAY OCCUR

- **LEGAL ADVICE**

- As this is the foundation step of any action the client would henceforth decide to take (eg, whether to pursue an action or otherwise) the lawyer must ensure he does a careful analysis of the facts provided before rendering any advice.

Any misstatement …

- **SOLICITORS WORK:**

Such job may include: land or company searches, preparation and filling of legal documents, drafting…

Liability is more in solicitors work than in a barrister work

HANDLING WRIT:

Lawyers must ensure they carefully file writs in court

NBA v Akintokun

HANDLING CASES:

- On conduct of cases before the court, see s.9 (3) LPA:
- Before Rondel: since lawyers were not paid,
- Rondel V Worsely (1967) 1 QB
- Before Rondel's cae
- English court initially held lawyers

Shortly after Rondel's case:

- On public policy
- To attain justice lawyers were to be fearless and independence.
- To retry action would prolong litigation. There must be an end to litigation.
- To encourage lawyers to accept briefs and not sy away for fear of a suit in negligence

ACADEMIC DISCUSSION

- That all reasons given are no longer tenable
- That rather than making the lawyer afraid, it keep them on their toes
- That the fact that negligence exist does not necessarily means that cases will be retried. Record of proceedings of the original action may be referred to rather lining up..
- **Exception to cab rank rule which allows for a lawyer to turn a cse down for reasons of non-**specialization. Besides, competent lawyers in the relevant field could be employed.
- As such, the rule in Rondel should be jettisoned and the courts should be left to apply their discretion regarding such cases.
- Besides, the position of Rondel no longer exists in the Uk, a case that formed the basis of immunity of LPs which we copied.

In criminal cases any liability for negligence of a lawyer is not allowed. In a civil court the criminal lawyer would be tried for negligence

OWOLABI 'S PROFESSIONAL ETHICS AND SKILLS NOTES 2016/2017 SESSION

WEEK SIX

DUTIES OF LAWYERS TO CLIENT (2)

PRIVILEGE AND CONFIDENCE OF THE CLIENT

- What is privilege information? See R 19(1) RPC, S. 192 (1) EA.
- A lawyer has a duty to keep secrets and confidences of the client… Rule 19
- The rule extends to his partners and associates..
- It extends to after the case.

Written and oral communication given by client to lawyers

- Nature of privilege information:-
- Should not be revealed or shared with third parties
- Should not be used to the disadvantage of the client
- Should not be used to the advantage of the lawyer or third parties unless the client consents. R 19(2) RPC

EXCEPTIONS TO THE RULE

Client's confidences and secret can be revealed in the following instances 19(3) RPC

a. With the consent of the client but only after a full disclosure Section 192 (1) Evidence Act
b. When permitted under the rules or a court order. See s. 6, 7 & 8 Money Laundering (prohibition) Act 2011 as amended in 2012---
c. Where the intention of his client is to commit a crime and the information is necessary to prevent the crime
d. Where it is necessary to establish or collect his fees or to defend himself, his employees or associates against an accusation of wrongful conduct
e. Where such information is made in furtherance of an illegal purpose 192(1)(a) EA
f. Any facts observed by any legal practitioner in the course of his employment showing that any crime or fraud has been committed since the commencement of his employment 192(1)(b) E.A.

NB: information not gotten from the client and are not fatal to the client's case are not privilege

SCOPE OF THE DUTY TO KEEP PRIVILEGE INFORMATION

- Duty extends to employees, associates, partners and others whose services are utilized by him including interpreters and clerks of lawyers. 19 (4) RPC and 193 EA
- A lawyer shall not communicate, negotiate or compromise on the subject matter in dispute with the other party except through his counsel. Rule 19(5) RPC

When the duty not to disclose privileged information does terminates?

- It last for a lifetime even after the employment. 192(3) EA

LAWYER AS WITNESS OF CLIENT

A lawyer may testify in a matter he is handling for a client more so that it does not touch on the merits of the case. Should a lawyer act for a client where he knows or ought to know that he or the lawyer in his firm may be called as a witness? 20 (1) RPC No, he is precluded from testifying.

- What is the reason for the rule?

He will not be acting in good faith or in the best interest of the client. he may also act to the prejudice of his client's case.

EXCEPTIONS R 20(2) RPC

a. Where the testimony relates solely to an uncounted matter.
b. Where the evidence relates to solely a matter of formality and there is no reason to believe that the other party will oppose or challenge the testimony
c. If the testimony relates solely to the nature and cause value of legal services rendered to the client
d. If the refusal will work substantially hardship on the client or will injure the client's case.

NOTE:

- Before trial where a lawyer knows that he would be a necessary witness except as to merely formal letter, neither he nor his law firm may conduct the trial. R 20(3) RPC
- After taking a brief where the lawyer learns that he or a lawyer in his firm may be called as a witness on behalf of his client, he and his firm ….20(4) RPC

- Can the lawyer give evidence for another party in the action other than his client? see 20(5). Yes provided it a co-defendant but the evidence must be prejudiced to the interest of the client.
- What if during trial justice demands that the lawyer gives evidence in his client's case 20(6) RPC. He cannot represent the client again, he bring in another lawyer to take up the suit.

RESPONSIBILITY FOR LITIGATION

A lawyer shall accept any brief I relation to which he has R 24

Once a lawyer accepts a brief, he takes responsibility for handling the case subject to the rules of professional conduct

- position at common law; a lawyer has an implied authority of his client to control the incidents of the trial of the case

EXCEPTION

- Where the client at the time of briefing the lawyer expressly forbade him from exercising any of his power unilaterally without consulting him.
- the common law position was followed by the Nigerian. See Adewunmi v Plastex and Edozien v Edozien

- Presently the rules expressly prohibits a lawyer from taking unilateral decision that will bind or affect the merits of a case or adversely affect the interest of his client without a prior consultation with the client. see 24(4) (5) and (6) RPC, Abiodun v Arowomokun.
- the power is now limited to issues not affecting the merit of the case which are essentially incidental. Like amendments, motion for writ, adjournment and so on.

WITHDRAWAL FROM EMPLOYMENT

Can a lawyer withdraw his legal representation on behalf of his after accepting the brief or during the pendency of matter? Note the example on ARKWY & AFOLABI

- **General rule- a lawyer shall not abandon or withdraw from an employment once assumed, except for good cause. R 21(1) RPC**

What will amount to good cause? See generally R 21(2) RPC; further Rule 20 (4) and R17 (5) RPC:

- Where the lawyer has to testify
- Consistent refusal to pay lawyer's fees
- Conflict of interest
- Insistence on an unjust immoral cause in the course of the case
- Where the client act against lawyer's advice and went on to give frivolous defence
- If a client disregard an agreement or obligation as to payment of fees or expenses

- Lawyer gives reasonable notice of his withdrawal to client when he wants to withdrawal. R 21(3) RPC…
- Lawyer to refund such part of the fee that he has not clearly earned. R 21 (4) RPC

If a lawyer cannot continue:

Counsel is obliged to give prior notice to the client

Rule 21 (3)

DEALINGS WITH CLIENT PROPERTY

Lawyer must be honest and fair in his delaying with clients and not to abuse or take advantage of the confidence that his client has in him. 23 (1) RPC

How can a lawyer be honest in their dealings?

- Must record transaction done on behalf of the client
- Must keep book of records
- Lawyer money should be kept separate from client's money. i.e client's account
- Lawyers should not misappropriate or convert client's property for his personal use.

See R 23(2) RPC

- There are various instances of fraudulent dealings by lawyers. See NBA v Fobur, NBA v Ndukwe.
- Where there's fraudulent dealings with client's money there will be disciplinary measures and sanctions
- Can a lawyer have a lien on client's property? Yes. Where the client is owing the lawyer. But you cannot sell or convert the property for mone see R 29 (3)(b)(iii). See also FBN v Owie
- Note: relationship between a lawyer and the client is fiduciary in nature. See NBA v Fobur.

CHANGE OF COUNSEL BY CLIENT: RULE 29 RPC

OWOLABI 'S PROFESSIONAL ETHICS AND SKILLS NOTES 2016/2017 SESSION

GENERAL DUTIES OF LAWYER TO CLIENT

- Act in the best interest of the client. Adewunmi v Plastex
- Display due care, competence and diligence in handling his client's case. R. 16 RPC
- Where in doubt as to any questions of fact or issue counsel must consult with his client
- Counsel must consult with clients before making an admission of facts on their behalf. See Nigerian National supply company v Sabana
- Counsel must keep client's informed of the progress and of any important development in the cause or matter handled. See Afegbai V A. G Edo
- Duty to be honest and fair. NBA v Ndukwe.

CHANGE OF COUNSEL

- Can a client change his lawyer after employing to act on his behalf? yes at any time before or after commencement of action
- Change of counsel where matter is pending. See 29(1) RPC
- The new counsel must inform the former counsel of his stepping into the matter
- Ensure that all outstanding fees are paid to the old lawyer
- Change of counsel during litigation. R 29(2) RPC
- Both the new and old lawyer must bring it to the notice of the court
- What happens between lawyer and client after change of counsel? See 29(3) RPC
- All the correspondence must be handed over to the client.

INVOLVEMENT IN CORRUPTION BY LAWYERS

Role of lawyer in corruption

- Corruption between lawyers and their client
- Helping clients siphon money between banks and out of the country through money laundering. Unethical conduct. See R 15 (3)(a), (i)and (j) RPC
- Helping client to evade tax
- Payment of kickbacks to clients to get briefs e.g from banks and other companies
- Payment of huge sum of money in cash to lawyers by clients as fess outside the banking system (money laundering)
- Failure of lawyers to report suspicious, unreasonable and unjustifiable money transactions to CBN, EFCC, NDLEA & other regulatory bodies. See s. 6, 7 & 8 Money Laundering (Prohibition) Act 2011 as amended.

CORRUPTION BETWEEN LAWYERS AND THE JUDICIARY

- Lawyers bribe judges to pervert the course of justice
- Lawyers encourage their clients to bribe judges.

Corruption between lawyers and other parties

- Lawyers bribe witnesses of the parties to get judgment
- Bribery of government officials to get things done for their client
- See. S. 8, 9& 10 of the corrupt practices & other related offences Act 2003 in LFN.

OWOLABI 'S PROFESSIONAL ETHICS AND SKILLS NOTES 2016/2017 SESSION

WEEK SEVEN

DUTIES OF LAWYER TO THE COLLEAGUES, PROFESSION, STATE AND COURT

DUTIES TO COLLEAGUES

Duty of respect and honesty to fellow colleague

Duty to keep promises

Duty to treat with equality subject to the rule of precedence

Duty not to covet etc.

Colleagues/Fellow advocates

- Must be treated with utmost courtesy and respect. R 26(1) RPC
- Whose matter is it? It is the clients matter and should not be taken personally.
- A lawyer could be liable for contempt where he threatens a fellow colleague on the account of his client. Re: Johnson
- A lawyer must be detached from cases that he handles. Per Niki Tobi…
- **Duty to keep promises R 27(2)**
- Lawyer must always act in good faith when dealing with clients
- Must stand by undertakings given, whether reduced into writing or not.
- Duty to avoid sharp practice (taking all means whatsoever to win over the case or to the detriment of the opposing counsel) conducts calculated to gain undue advantage against the opposing counsel.
- Keep away from acts or conducts calculated to gain undue advantage against an opposing client
- A lawyer shall not take undue advantage of an opposing counsel predicament. 27(2) RPC

Example:

- Deliberate if filling frivolous and irregular applications
- Seeking ;;;;;
- ……
- …….
- ……
- …..
- See Kwaptoe v Tsenyil. Counsel …..
- Must not covet clients-
- Counsel must not take over the employment of fellow colleagues at the bar
- However, counsel can proffer advice to persons who are displeased with the services of their counsel. R 14(5) and 27(5) RPC. He can proffer advice with the consent of the other client.

In cases of negligence on part of the other lawyer, you don't need consent

- Where a counsel is receiving instruction from a client who was prior to the time represented by counsel, where client is no longer interested in the services of the later, he must ensure that counsel A get all his unpaid professional fee
- Where a lawyer decides to have communication with the client of a colleague, such communication must be done before that colleague. R 27(a)
- A lawyer must not give advice to a person represented by another lawyer. 27(5)

Counsel to opponents

- Must respect opposing counsel and must not bring a case or defence merely
- To harass or injure or to oppress or to work hardship on the opposing counsel.
- Actions brought by counsel must be justifiable.

Represent the client within the bounds of the law

- Use of abusive words or statement against opponents must be avoided in or out of court
- Counsel must not be used as a tool to assuage the emotions of a disgruntled clients.
- Equality at the bar
- Itemise the precedents in court
- AGF
- AGS
- LB/SANs in order of seniority

- Persons by virtue of their office
- Seniority by enrolment
- By warrant.

- Equality at the bar is subject to the above.

DUTY OF LAWYER TO COURT

A lawyer can be describe as a……..minster…….in the …….temple…….of……..justice……..

- Punctuality
- At what time does the court sit? 9. o'clock or so soon thereafter
- To be ready before the judge
- Meet with his witnesses before hearing
- Describe the mode of dressing to court.
- Men
- Collarless shirt
- Black suit

It is important to

Know your court e.g. parking, robing, courtroom temperature

Know your judge

- Peculiarities of the judge
- Punctuality of the judge, sitting and rising habits, etc.

Know where to sit in court

- Mode of addressing the court and fellow colleagues.
- To exhibit the character of dignity and honour at all time

Examples

- Not chew gum before the court
- Not read extraneous materials
- Not sit with leg crossed before the court
- Not place hands in court
- Not speak rudely to the judge
- Failure to keep promises or undertaken made to the court R 31(3)
- Do not discuss a pending case with the judge in the absence of the opposing counsel
- Do not send communication to the judge without the knowledge of the opposing counsel
- All applicable to a tribunal.

- Must be candid and fair-

- Counsel must be…

Rule 32 (3) (a-k)

- Citing false and irrelevant authority

TRIAL PUBLICITY

- Lawyers must not make extra-judicial comments via communication media, whether in criminal or civil cases 33 RPC
- Relationship with judge (34)

DECORUM IN COURT

- How do I behave in court

Query: Difference between representing client and representing himself? **Robe, and outside the bar**

Appearance while conducting his case? 36 RPC

Exceptions?

Legal year

Call to bar ceremony

Burial/ceremony

Valedictory ceremony

Can take off at the instance of the court

Can address while sitting, aged or sick

Duties to the state

- Maintain and respect the dignity of the profession
- Must disclose act of clients where it will constitute a crime to include cases of privilege communication
- No liability lie to the counsel on prior caution before commission of the crime.

Duty to the profession

- Prevention the admission of unqualified legal practitioners. R 2
- Prevent the admission of unsuitable persons to the Bar, eg insufficient qualified persons or persons of questionable character.
- Prevent the use of intermediaries in the profession. RPCR 4
- Lawyers must avoid the use of non-lawyers or agents intervening in the relationship between his lawyer and client
- An exception to this rule is lawyers who act for charitable societies or other such institution R 4 RPC
- Prevent the unauthorized practice of law
- By not assisting non lawyer to practice law
- Or persons whose name have been struck off the roll or suspended from practice
- Prevent from sharing the proceeds from his practice with non-lawyer
- Must not sign documents not prepared by him. Rule 3

Association for legal practice

- A lawyer shall not associate with non-lawyer in carrying out legal practice. R 5(1)
- Note cases where partner dies R 5(2)
- He must not couch his name in such manner to make others believe he is in a partnership when he is not R.5(4)

Holding brief

- Is a lawyer allowed to hold brief for another lawyer? R 27(3) RPC

Duty not to instigate litigation or controversy??? R 47 RPC—Ambulance chaser

Duty in criminal cases

- **Defence counsel shall**
- - shall be present in court throughout the case and on the fixed dates R 14(4)
- Must be seen to ensure substantial justice of his client's matter
- Cannot stand bail for his client
- Note the ground to stop representing client.
- A ground of confession of guilt shall not operate as a ground for withdrawal.
- The defence counsel has a duty to discredit the evidence of the prosecution through technical means

Prosecuting counsel

- Not bound to secure conviction'
- To ensure justice is done
- Shall not supress facts that would establish the innocence of the accused. Where he has such facts, he must disclose same on time R 37(6)
- A lawyer is prevented from bringing before the courts charges which evidence he does not have or cannot establish before the courts. R 37(5)

CONTEMPT OF COURT

- Definition: disdain, disrespect, condescension, disregard, opprobrium.
- An act or omission that brings disrespect to the authority of the court. Where a person who is a party to a proceeding in a superior court of record fails to comply with an order made against him or an undertaking given by him or where a person whether a party to a proceeding or not does any act which may tend to hinder the course of justice or show disrespect to the courts authority. ….the dictionary of English law
- The wilful disregard or disrespect for the authority of the court
- An action or inaction amounting to an interference with or obstruction to or having a tendency to interfere with or obstruct due administration of justice. Awobokun v Adeyemi???
- **Ingredients**

- -failure to comply with court order
- Hinderence of the cause of justice
- Disrespect to the authority of the court
- Insulting the person of the judge.

Conducts amounting to contempt

- Oral or written comments scandalizing or insulting the court
- Interfering proceedings
- Threating judicial officers bound to enforce their duty
- Interfering or intimidating witnesses
- Commenting on pending proceedings (subjudice)

NB: not all the act amounts to court, the judge are to distinguish before discourtesy and contempt. Izuaora V Queen 13 WACA 13

Purpose of contempt

- To maintain order and decorum in the court
- To protect the dignity of the court
- Prevent undue interference with the administration of justice PARASHURAM DETARASHAMDASANI V KING EMPEROR (1945) AC
- Not to bolster up power of the judge as an individual

TYPES

- Criminal contempt: on acts affecting the administration of justice: fighting, accusing the judge, calling names. (indirect)
- Civil contempt: disobedience to court orders or processes. (indirect): contemptin procedure.
- Acts that constitute wilful disobedience to court orders e.g disobedience to court judgments, order or rulings, aiding and abetting the above, failure to carry out promises made to court, it is also referred to as a private injury.

Nature of court

- In facie curiae: court committed in the face of the court, usually witnessed by the judge or those present in court. E.g slapping the judge, throwing at the judge or booing him, recording of court proceedings on video or such devices.
- Allegation of bias made against the judge
- Chewing gum
- Ex facie curiae: out of the court.
- Word spoken or otherwise published
- Acts done outside the court intended or likely to interfere with or obstruct the fair administration of justice.
- Civil is always ex facie while criminal can either be in facie or ex facie.

Proof of contempt

Standard of proof.

Both are proved beyond reasonable doubt because court has held that the nature of contempt is criminal. See IFEKWU V MGAKO (1990)

- A civil contempt arising from breach of an order of injunction must be proved beyond reasonable doubt.

Procedure

- He is tried summarily
- He is put into the box and asked to tell the court while he should not be dealt with. See Boyo V AG of Midwestern state (1971) 1 All NLR 324. Oku v the State (1970) 1 NR 60.
- What obtain is the accused is put in the witness box and asked to show cause why he should not be convicted.
- In trial of civil contempt, the normal routine is employed
- Offence can be dealt with summarily but better with other judge presi0ding
- - hearing must however be conducted in accordance with cardinal principle of fair hearing
- The fact of the contempt must be obvious and uncontested

2. he goes through the normal process of criminal trial i.e arrest,charge

- Note that it is however advisable that when a #

Criticism

- In contempt in facie, all processes of fair hearing are breached.

Jurisdiction

- Superior court of records (high court- s.c)
- Magistrate have been held to have jurisdiction to punish contempt in facie curiae.

Punishment

- Criminal contempt—three months
- Civil- three months/ fine Okoma v Udoh, s. 133 CCA

NB: Apologize to the court that you have purged yourself of the contempt in acts not deliberate. The court may pardon such a person.

Contempt: civil contempt is punishable for 6 months- Hasbury laws of England.

OWOLABI 'S PROFESSIONAL ETHICS AND SKILLS NOTES 2016/2017 SESSION

WEEK 8

LEGAL DRAFTING

- Note the different between legal drafting and writing. Legal drafting is rigid and have procedure that must be followed while legal writing is a little more flexible and you can opt for any style you like.
- Drafting leaves less room for personal styleDrafted document are likely to be used over a period of time by different people
- There are more rules to follow in drafting
- No room for ambiguity in drafting
- Communication is very essential in drafting and writing.

Similarities:

- Clarity
- Simplicity
- Accuracy
- Communication

Basic hints to bear in mind when drafting

- Take cognizance of people that will go through the document looking for loop holes
- Take into consideration the status of people you are drafting for.
- Be dynamic
- Draft so even the person trying to cause trouble would not misinterpret the document
- Do not throw the baby away with the bath water
- Avoid old fashioned archaic, and complex words and expressions, except where it is absolutely necessary
- Badly drafted legal documents is worse than no document at all

SOME COMPLEX WORDS AND THEIR SUBSTITUTE

Call your attention to the fact that------ remind you
In the nature of—like
The fact the he has not succeeded --- his failure
In many instances----- sometimes
For the purpose/period of ---- for
Because of the fact that---- because
The question as to whether ---- the question

BASIC HINTS

- Use plain English
- Use ordinary words
- Keep sentences short
- Use appropriate punctuation
- Prefer active to passive voice (the police arrested the man (active) , the man was arrested by the man (passive))
- Consistency in the use of words and phrases
- Avoid repetition- it makes document longer and less clear
- Avoid vague words and expression.
- Use precedent where necessary but not lavishly
- Avoid spelling and punctuation errors (use English dictionary and consult others for vetting, go through it continuously) – is used for given an example. ; is used for the expression of same idea in another way, also used to separate list of items where they are long. , is used to signify pause between sentence and is similarly used to separate list of items
- Use of present tense is better
- Use accurate figures, name and dates.

Paragraphing in Legal drafting
How to number paragraph?
In drafting, numbering of paragraph should be as follows:

- Sections- should be numbered with Un-bracketed Arabic numerals example 1, 2, 3.
- Sub-sections are numbered in bracketed Arabic numerals example (1), (2), (3)

- Paragraphs are numbered with bracketed lower case letters or with alphabet (a) (b) etc.
- Sub- paragraphs are numbered with bracketed lower case roman numerals (i) (ii)
- Sub-sub-paragraphs are numbered with bracketed upper case letters of the Alphabet (A), (B).

Indentation

Sections starts from the margin

Subsections gives spaces from the margin

Paragraphs

Sub paragraphs

Sub sub paragraphs

Alignment: each subparagraph must make a complete sense when read with the main paragraph.

(1)----------:

(a),,,,,,,,,,,,,,

(b)……

(c)…….

Paragraphing techniques:

- Two layer technique: introductory sentence and other sentences
- Three layer technique: introductory, body and conclusions

Punctuation in Alignment

- Every introductory sentence must end with a colon
- Every paragraph in statute ends with a semi-colon
- Where there is a concluding clause, the last paragraph must end with a coma and the concluding sentence with a full stop.

QUALITIES OF GOOD LEGAL DRAFT MAN

- Humility
- Knowledge of human affairs
- Honesty and integrity
- Good command of English language
- ICT literacy and management (don't be servitude to computer's suggestion)
- Use of present tense is preferable
- Express ideas positively without mincing words (always try to express negative ideas in a positive way) e.g. did not remember – forgot
- Avoid exceptions
- Avoid noun cluster to avoid ambiguity
- Don't use gender specific terminology
- Make paragraph very short
- Each paragraph should be written positively and should communicate one central idea.

STAGES OF LEGAL DRAFTING

1. Taking and understanding instructions
- Content of drafting instruction
- Sufficient background information
- The principal objects of the legal document
- Means or mechanisms put in place to achieve the principal object
- Problem/challenges envisaged

2. Analysing the instruction
- Existing legislation
- Problem areas
- Practicability

3. Designing the draft
- A skeletal outline of the document

- Adopt and use of precedent subject to modification

4. Composing the draft

- Developing the outline into a final draft

5. Scrutinizing the draft

- Check if the purpose of the client have been achieved
- Crosscheck for syntactical and semantics, grammatical errors
- Compliance with the standard form or rules governing the document
-
-
-
-
-

OWOLABI 'S PROFESSIONAL ETHICS AND SKILLS NOTES 2016/2017 SESSION

WEEK 10

LETTER WRITING & CURRICULUM VITAE

Means of communication:

Written communication

Physical meeting

Telephone conversation: Oral communication urgency

USES OF LETTER

- To prepare a search report
- To give or receive/clarify instructions
- To give opinion/advice on legal issues
- As a pre action requirement, to seek out for settlement out of court
- To communicate with government department agencies
- Letter is most preferable when there is need for record keeping
- Means of communication and information
- It is used a follow up
- Constitute permanent records
- Can prompt action
- Represent the company's image

CLASSES OF LETTERS

a. FORMAL

b. SEMI-FORMAL

c. INFORMAL

- **TYPES OF LETTERS**

a. **Demand**

b. Letter of confirmation

c. Letter of notice

d. Opinion/ advice

e. Status, progress

LANGUAGE OF THE LAWYER'S LETTER

- Use standard English
- Simple, Accurate and direct words, expressions and sentences.
- Brief, polite, positive, persuasive, helpful, tactful and firm.
- Avoid archaic, verbose and informal language
- Avoid familiarity, and do not blame others for errors committed by your organization.
- Discipline in choice of words
- Avoid long letter, except where necessary
- Correct spelling and proper use of punctuation
- Knowledge about the reader is necessary, as they help in choosing your language/diction

GENERAL CONSIDERATION

- Plain words/clarity/unambiguity
- Avoid duplicity/abbreviation (especially, the text message lexicon, such as ***lmao***)
- Be polite/ and firm
- Be concise and use active words

FORMAT OF A LETTER

- Note alignment and indentation
- Generally, there two forms-
- Full block- align all paragraphs on the left hand margin of the page without indenting. This style is more modern, achieve elegance and saves time

EXAMPLE

OWOLABI 'S PROFESSIONAL ETHICS AND SKILLS NOTES 2016/2017 SESSION

DIAMOND CHAMBERS
(BARRISTERS AND SOLICITORS OF THE SUPREME COURT OF NIGERA)
234, Santiago Lane, Banana Island, Lagos State
Email: ramlad4sure@gmail.com
Hotline:+2348093706957
Our Ref:……
Your Ref:……..

Date: 28 January 2016
The Managing Director,
Ogudu Contractor Plc,
5, Ogudu Express Lane,
Ojota,
Lagos State.
Dear Sir,
RE: NEGOTIATION FOR LOAN WITH GT BANK PLC
In furtherance of your instruction received on the above subject matter dated 20/1/2016, we are happy to inform you that the negotiation agreement has been concluded. However, contrary to the terms for the amount of Ten Million Naira and the three years moratorium of the loan proposed, the bank has agreed to settle for the following terms:

a. Amount: N 8, 000 000.00 (Eight million naira only)
b. Term: Two (2) years
c. Security: your property located at 56, Lagos Crescent, Enugu, Enugu State.

Please kindly find attached a copy of the invoice for professional fee.
Thank you.
Yours faithfully,
Signed
clement owolabi
Principal Partner
For: Diamond Chmanebers Ramadan & Co Chambers

- Semi Block: there is indentation- usually five spaces each for the paragraphs. This is traditional style. Presents clearly the beginning of a new paragraph.

EXAMPLE
RAMADAN & CO CHAMBERS
BARRISTERS AND SOLICITORS
234, Santiago Lane, Banana Island, Lagos State
Email: ramlad4sure@gmail.com
Hotline:+2348093706957
Our Ref:…… **Your Ref:……..**

Date: 28 January 2016

The Managing Director,
Ogudu Contractor Plc,
5, Ogudu Express Lane,
Ojota,
Lagos State.
Dear Sir,

RE: NEGOTIATION FOR LOAN WITH GT BANK PLC

In furtherance of your instruction received on the above subject matter dated 20/1/2016, we are happy to inform you that the negotiation agreement has been concluded. However, contrary to the terms for the amount of Ten Million Naira and the term of three years proposed, the bank has agreed to settle for the following terms:

a. Amount: N 8, 000 000.00 (Eight million naira only)
b. Term: Two (2) years
c. Security: your property located at 56, Lagos Crescent, Enugu, Enugu State.

Please kindly find attached a copy of the invoice for professional fee.
Thank you.

Yours faithfully,

Signed

M. Ramadan
Principal Partner
For: Ramadan &Co Chambers

ESSENTIAL ELEMENT OF A LETTER

1. The letter Head

- Usually pre-printed
- Lawyers prefer use of A4 or A5 paper
- Design is important, as good and elegant letter-head portrays the firm in good image
- Should contain sufficient info about the firm/biz
- Note where it is a personal letter head. Name of the firm/person
- Solicitor(s) and Advocate(s), Barrister(s) and Solicitor(s)

- Name of firm/legal practitioner
- Status – Barristers and solicitors
- Address of firm/legal practitioner
- Phone numbers, email, web site (if any), fax, P.O. Box etc
- Academic qualifications
- Name of lawyers in the firm,

2. Reference Number

- Useful for filing and cross references
- It enable the recipient to find the file more easily
- Our Ref: e.g……. NLC/ md.gtbank/m.090/2016-01
- Your Ref……

3. Date- 13 January 2016

January 13, 2012

Do not write 13/01/2010
It is unprofessional to back-date letters

4. Name and address of the recipient (when writing within state, no need to include the state. However when writing outside of a state or the country, you can include the state and Nigeria.)
5. Attention (if necessary)- ensures that letter is directed to a particular person, usually where there is previous course of dealing with a particular person in an organization. It saves time. Attention line should be underlined in bold print. No full stop at the end.

Example
The Managing Director,
Ogudu Contractor Plc,
5, Ogudu Express Lane,
Ojota,
Lagos State.
ATTENTION: Dr. Muhammad (Associate)

6. Salutation- Dear Sir/Madam (Yours faithfully)
7. Heading/Subject- very brief and simple. Note when to use the expression 'Re'(replying, be strict with the initial heading used in sending the letter) and 'Subject'(may be used for the first time or when replying)
8. Body of the letter- contains

a) Introduction
b) Reason for writing
c) Facts, & position of the law
d) Action expected of the recipient
e) Consequences/threats (if necessary)

9. COMPLIMENTARY CLOSE (Yours faithfully/ sincerely)
10. SIGNATURE
11. NAME OF SIGNATORY (full name, don't abbreviate your surname)
12. DESIGNATION OF THE SIGNATORY (status in the firm/ principal partner etc)
13. COPIES REFERENCE (if any)
14. Attachments/ Enclosure (if any)
15. CONTINUATION SHEET
16. REFERENCES (if any)

OR

1. Yours faithfully/ sincerely
2. For: Ramadan and Co
3. Signature
4. Name of the signatory
5. Designation of the signatory

SUBJECT TO CONTRACT
WITHOUT PREJUDICE
CLASS TWO
Drafting Legal Document

1. Internal/Office Memoranda
2. Minutes of meetings
3. Curriculum vitae or resume
4. Letters
5. Pleadings
6. Legal opinions and advice.

DRAFTING A CURRICULUM VITAE: BASIC HINT

Curriculum Vitae or curricula vitae or resume (summary of education and education experience).

CV… stands for curriculum Vitae, which is Ltin for "course of life" it is a summary of your experience or other qualifications. it is a serious document and not an experiment in surrealist art. Would-be employers expect to find a CV written in a specific manner. When compared with a resume, it is a much longer detail about you.

USES OF CV

In some countries, A CV is typically the first item a potential employer encounters regarding the job seeker and is typically used to screen applicants, often followed bu an interview

CVs may be used for applicants in post-secondary programs, scholarships, grants and bursaries.

TYPES

a. Traditional CV: chronological
b. Academic CV: educational achievements and are used when applying for lecturing or research –based roles.
c. Teaching CV: target it to the post you are applying for highlight of qualifications
d. Skills based CV: also know a s functional CV, can be used if you have gaps in your employment history.

QUALITY

1. Elegant (no spelling errors, articulation, must not be signed)

2. Font size (not so big to exceed more than 2 pages) use a legible font
3. Highlight the section header in bold
4. Leave extra spaces between paragraphs
5. Keep the left and right margin equal
6. Always spell-check your CV.
7. Always produce a rough draft.
8. Should not exceed 2 pages in length and ideally it should be only one page
9. Including a passport size photograph is not obligatory but is advisable.
10. It should be present in a clear, organised manner
11. Always use clear unambiguous manner
12. Avoid abbreviations unless it is unavoidably necessary. And when used explain what it means
13. Include a letter of introduction with your CV.

CONTENT OF CV

a. Contact details
b. Education: education list and date all previous education, placing the most
c. Skills: IT skills, ability to work in a team, manage people, customer service skills,
d. Work experience: internships, voluntary roles or previous jobs
e. Referees:
f. Employment history
g. Some personal information:

LENGTH OF A CV:

It depends:

In some commonwealth countries such as the UK, a standard CV would ideally be no longer than two pages.

WHAT MAY BE LEFT OUT

a. The term curriculum vitae or resume – CV will suffice in the UK
b. A photo- unless you are applying for an acting or modelling job
c. Date of birth or place of birth- this is unnecessary and can lead to identity theft
d. Profile is necessary: personal statement, relevant achievement and skills

A STANDARD CV SHOULD INCLUDE THE FOLLOWINGS:

- Heading- Curriculum Vitae
- Personal Data/Detail
  - Full Name (note the rule guiding surname and first name)
  - Sex
  - Marital Status
  - Date of Birth
  - Nationality- Nigerian/ African
  - State of Origin
  - Home town
  - Contact (Address, phone number and email)
- Career objective: not more than two sentence
- Educational Qualification
- Institutions attended: start with the highest with the accurate date (Phd- primary school)
- Make explanation for all the years contained
- Tell the truth about your age or make an age declaration
- Work Experience
- Professional organization/ Affiliation
- Seminars/ Paper's presented /Published Articles
- Awards
- Hobbies

- Referees

OFFICE MEMO

Literally it is a note to assist the memory. They are written internal communication means for exchanging information relating to day-to-day functions within organizations. See Obi Okoye 273

A form of letter writing, written to a person in the same organization…

USES OF MEMO

a. To issue instructions to the staff
b. To communicate regarding policy changes to the staff
c. To give / seek suggestions

ADVANTAGES

Time saving
Less formal
Maintenance of good relationship
Low cost
References
Informs decisions and actions

DISADVANTAGES

Time consuming
Expensive
Lack of formality
Lack of explanation
Not suitable for people that are illiterate
Of less importance to the reader

TIPS FOR WRITING A GOOD MEMO

Be concise
Know the audience
Be objective
Avoid jargons
Use active verbs

PART OF A MEMO

1. Heading (the Organization name (identify where the two parties links))
2. Title
3. Name & designation of the addressee
4. Name & Designation of the writer
5. Date
6. Subject
7. Body of the Memo
8. Conclusion
9. Signature and Name of writer

NIGERIAN LAW SCHOOL, LAGOS CAMPUS
MEMORANDUM/ INTERNAL MEMORANDUM

TO: MRS T. C ADEBIYI (Deputy Director General and Head of Campus)
FROM: SYLVESTER C. UDEMEZUE (Lecturer II)
DATE: 29 January 2016
SUBJECT: INDUCTION PROGRAMME FOR STUDENTS OF THE 2015/2016 ACADEMIC SESSION
Kindly find below the names of the lecturers that participated in the induction programme held on 21/2/2016.

1. Dr Hammed
2. Ogbuanya
3. …

Kindly direct.
Thank you ma
Signature
Sylvester Udemezue
Lecturer II
CC:
Director Academics

MINUTES OF MEETINGS

A gathering of people in a place for a purpose. It is one of the means of communication for the purpose of obtaining or carrying out client's instructions. Assembly of two or more persons in a specified place at time, with an aim of achieving a set goal.

WHEN:

a. A decision or purpose involving several parties or stakeholders
b. Urgency is required in talking decision and correspondence/ telephone may not be adequate.
c. Personal interaction is required to carry out a legal business/ lubricate negotiation
d. The matter at hand is complicated or complex and other means may not suffice.

PREPARATION FOR MINUTES DRAFTING

a. Choice of venue
b. Issue of notice to the participants and it must include the agenda
c. Pre-meeting matters
d. Minutes proper

PARTS OF MINUTES

1. **THE HEADING/ TITLE**
2. **LISTS OF MEMBERS PRESENT**
3. **LIST OF MEMBERS ABSENT**
4. **OPENING PRAYER/REMARKS**
5. **READING AND ADOPTION OF THE AGENDA**
6. **READING AND ADOPTION OF THE LAST MINUTES**
7. **MATTERS ARISING**
8. **DISCUSSION OF THE MATTERS LISTED IN THE AGENDA**
9. **RESOLUTION**
10. **REPORTS**
11. **ANY OTHER BUSINESS**
12. **CLOSING OF THE MEETING / PRAYERS**
13. **DATE**
14. **SIGNATURE OF THE CHAIRMAN AND SECRETARY**

DETAILS OF THE DRAFT

- Detail note which serve as official written record of a meeting or conference
- A strictly formal business document
- Be objective. No room for subjectivity, explanatory or personal opinion.
- Minutes need not be detailed: it should records only decisions taken, motions moved or passed or assignment given or roles assigned and should not record who says what
- No need to state the conduct of the argument
- Concise and previous
- The minute writer must as much as possible detach his personalities from the minute.
- The writer cannot be a major participant in the meeting
- He is only in the meeting to record the minute in an accurate manner

PURPOSE/USES

- Minutes record essential information about the meeting. It is not to capture every details but the basic ones.
- It reminds people of their role

- It is used for reference purposes
- It provides background information for future meeting
- Minutes of meetings reduce/ prevent argument and disagreement about what happen at the meeting

RECORDING THE MINUTE PROPER

- Action to be taken before the meeting
- Create a template as guide (based on the agenda for the meeting)
- Information gathering (to be familiar with the issues and the persons to attend)
- Know the persons to be in attendance.
- Make a decision about how to record (mode of recording e,g tape recorder, computers and always keep a backup means)
- Try and carry along the head of the organization about the mode of recording to know his stand

DURING THE MEETING

- Ensure appropriate record of attendance (those in attendance and those present)
- Questions are allowed for clarification on the attendance register
- Don't record verbatim
- Try to keep major item
- Take down important information
- Record items and decisions sequentially
- Ask questions for clarifications
- Exhibit humility during recording
- Record only decision taken, roles assigned, resolutions passed, motions moved and adopted and rejected etc.
- Don't mention names except where necessary

- **AFTER THE MEETING**

- Review the outline, additions and comments and compose a standard minute
- Try to do it immediately after/ very shortly after the meeting
- Match the outline with the templates produced before the minutes
- Number of pages: as short as possible
- Try and send to others for verification before circulation
- Circulate the final copy to all those in attendance.

OWOLABI 'S PROFESSIONAL ETHICS AND SKILLS NOTES 2016/2017 SESSION

WEEK 12

LEGISLATIVE DRAFTING

LEGISLATIVE DRAFTING: a process of making an idea into government policy.

Process by which policies and proposal are put in a legislative language called Bill. Ready for presentation to the relevant legislative house for passage into an Act or a Law or a Bye law as the case may be. It covers all the stages and processes a draft man will go through to produce a bill. Include drafting of subsidiary legislation.

QUALITIES OF A GOOD LEGAL DRAFTS MAN

a. High intellectual capacity
b. Quick and retentive mind
c. Ability to analyse the problems in details.
d. Must be a lawyer
e. Sound knowledge of linguistics
f. High mental discipline
g. High level of concentration
h. Clear thought
i. Strong perception of issues
j. Ability to work under pressure
k. Ability to work with little or no supervision
l. Ability to work in a team
m. Willingness to accept criticism
n. Good mastery of English language--- written and spoken; semantics and syntax
o. Must be a good listener (listening, questioning and advice)
p. Good knowledge of politics, sociology and psychology of the society in which he operates.
q. Maturity in thinking and in conduct.
r. Ability to keep confidences
s. Good at understanding policy issues
t. Humility

STAGES IN LEGISLATIVE DRAFTING ARE AS FOLLOWS

a. **Taking and understanding full instruction:** Drafting instructions, Consultation for the purpose of understanding the instruction. Sufficient background information, Principal objects of the proposed legislation, Means by which the principal objects are to be achieved, All known implications, difficulties, whether legal, social ….
b. **Analysing the instruction:** is there any law in place regulating the law that is to be drafted, you discover potential danger area, the practicability of the instructions.
c. **Designing a draft**: skeleton for the work, the pattern of the law to be drafted, knowing the need for a new law or to amend the existence law, or to repeal or re-enact a new law.
d. **Composing the draft**: fleshing the skeleton, composing with the aid of precedent books of laws and regulatory bodies and also ensuring that obsolete precedents and laws are not used.
e. **Scrutiny**: look for omission or mistake. Grammatical errors etc. give it to somebody else.

The stages are chronological.

FORMALITIES AND ARRANGEMENT, AIDS TO GOOD LEGISLATIVE DRAFTING

Generally, statutes are arranged in parts and chapters.

a. Sections of a statute stand-alone e.g. Section 14
b. Sub-sections are in parenthesis e.g. section 14 (1)
c. Paragraphing technique in laws e.g. section 1(1) (a) (i) (A): section 1, sub-section 1, paragraph a, sub-paragraph 1, sub-sub-paragraph A

ARRANGEMENT IN PART

a. Numbering of parts of a statute: Part I, Part II etc. i.e. Roman Numerals

Reasons for arrangement in parts

1. Clarity of presentation

2. Ease of reference

CRITERIA FOR ARRANGEMENT IN PARTS

a. Length
b. Small parts
c. Headings to parts
d. Marginal notes (section heads/section head notes shoulder headings)

E.g. section 97 1999 Constitution (Languages) marginal notes

e.g. section 11 Cap S9 LFN 2004

e. Marginal references (explanatory & sign posting)

Reference to chapter –Cap 121

Reference to a numbered

ORDER FOR ARRANGEMENT OF SECTIONS

a. Preliminary segment
b. Principal
c. Miscellaneous
d. Final

Division into parts: e.g CAMA,

Reasons or advantages of dividing statutes into parts

- Where the law covers different subject arrears e.g CAMA
- For ease of reference
- When legislation is bulky to make it less unwieldy
- Promote clarity and orderly presentation

1. Use of preambles

Preamble: short introductory statement, justify the meaning of the law, explain the spirit and intendment of the law. Therefore, preamble is to legislation what recital is to deeds. However, use of a preamble is no longer in vogue but for the following circumstances-

a. International treaties
b. Constitution
c. Bye-laws (local enactments):applied to close group of people not for all persons
d. Ceremonial statutes: made to recognise a particular ceremony.(laws made to confer citizenship on a foreign personnel)

2. Segmentations

- Preliminary maters: long title, commencement, enacting clause, preamble, short title, interpretation, etc
- Principal: substantive and administrative provisions e.g establishment, functions, composition, etc
- Miscellaneous: offences, penalties, power to make subsidiary laws
- Final matters: includes transitional provisions such as repeal, duration, application, schedule. Savings etc.

3. Marginal Notes: sign posts that give summary of the provision of a particular section. Note, not part of the legislation. They can assist in clearing ambiguities that may arise from interpretation of a statutes.
4. Paragraphing, alignment and indentation
5. Use of marginal notes

PART OF A BILL: PROPER ORDER

1. Long title:
2. Commencement
3. Enacting clause/formula
4. Establishment
5. Interpretation
6. Short title
7. **Preamble**:
8. Application
9. Duration

10. Repeal
11. Schedule: used to banish technical details or key items, list of items, plans, tables, diagrams etc. schedules are also used to provide for information and details that could not be conveniently provided for in the section. However, it is must be noted that before any information can be provided for in the schedule, it must have been referenced in a section in the statute.

1. LONG TITLE

It is the very first clause in a statute. It falls within the preliminary matters. The long title provides for the purpose or object of the law. Preamble brings intendments not to be confused with long title. Its needs not be long. It begins every legislation. It is usually to interpret ambiguities see vacher and sons v London. USUALLY IN CAPITAL LETTERS OR IN BOLD PRINT.

In an Act Long title – an act ….

In a law ---- a law

In a bill…. A bill for an Act

Note: … and matters connected thereto

THE LAW REGULATING MINING AND PROHIBITION OF INDISCRIMINATE MINING.

Guide for drafting the long title

a. Identify the object/purpose of the proposed law
b. Write the object in a concise, and precise and clear manner. Not more than one simple sentence.
c. All in block/uppercase letters.
d. Depending on the relevant legislative house, the LT must be begun with any one the following:

'A BILL FOR AN ACT' OR 'A BILL FOR A LAW' OR 'A BILL FOR A BYE- LAW'

e. It must end with any of the following:

'AND FOR CONNECTED PURPOSES' OR 'AN FOR RELATED MATTERS' OR 'AND ALLIED FOR MATTERS' OR 'AND FOR INCIDENTAL MATTERS' etc

2. COMMENCEMENT

It is not the same as the passing of the law. A law may be passed and it commences later. An Act is passed when legislative steps are concluded, it commences when it comes into operation. Where the Act is silent it commences the date assent is given to it or when it is published in the state Gazette according to the jurisdiction. It may be stated the commencement date, and it may appoint an authority to determine the commencement date. It may be tied to an event

It tells the date on which the law is to come into force. It could be the second part depending on the instruction. See Obmiami v. Brick & Stone (Nig)

There are three ways to draft:

1. If the instruction taken specifies the date of commencement of the law. The commencement takes the following format in this instance:

COMMENCEMENT (January 1, 2014).

Where specific date is given, it comes immediately after the Long title

Where no date is given, but the instruction gives a person power to determine the date the law will become effective. It will not come as the second clause, it will take the form of section in a statute to be drafted as follows:

SECTION 1:

'The Act/Law shall come into force/become operative/ take effect on such a day as determined by the Osun State Commissioner for Environment by a notice in the Gazette'

2. Where no date is given and no person is given the power to determine the date the law will take effect. It takes effect on the day it receives executive assent.

'This Law/Act shall take effect/ become operative on the date it receive the assent of the President and commander in chief of the Armed Forces of the Federal Republic of Nigeria'

[February, 2013] commencement

Or

Where it forms a section of the law e.g.

This law shall come into force on the 17th of January, 2017.

APPLICATION

It may be territorial

It may be jurisdictional

It may be all embracing

May apply to a group of etc.

DURATION

It remains in force unless repealed. Where a law expires it does not affect anything validly done before it was repealed. Se section 6 Interpretation Act.

SCHEDULES

The law may need to contain some technical term. See section Afolayan v Bamidele,. The section refers to the schedule and the schedule refers to the schedule. This is called incorporation by reference.

3. ENACTING CLAUSE/ ENACTING FORMULA

It give the law its jurisdictional identity and constitutional authenticity. It is only stated once just like a recital. This clause discloses the authority or institution that makes the law. It is drafted as follows based on the sponsoring authority:

BE IT ENACTED BY THE NATIONAL ASSEMBLY OF THE FEDERAL REPUBLIC OF NIGERIA AND BY THE AUTHORITY OF THE SAME AS FOLLOWS:

'ENACTED BY THE NATIONAL ASSEMBLY OF FEDERAL REPUBLIC OF NIGERIA as follows:' OR

THE NATIONAL ASSEMBLY OF THE FEDERAL REPUBLIC OF NIGERIA ENACTS as follows:

ENACTED BY THE HOUSE OF ASSEMBLY OF OSUN STATE OF NIGERIA as follows:

THE HOUSE OF ASSEMBLY OF OSUN STATE OF NIGERIA ENACT as follows:

DECREE: 'THE ARMED FORCES RULING COUNCIL OF THE FEDERAL REPUBLIC OF NIGERIA DECREE as follows:'

THE MILITARY GOVERNMENT OF THE LAGOS STATE OF NIGERIA ENACT as follows:

THE MILITARY GOVERNOR OF LAGOS STATE MAKES THE FOLLOWING EDICT:

4. PREAMBLE: begins with WHEREAS OR BACKGROUND

It is used to explain the spirit and the intendment of the legislature. The Essence of a Law And Why The Law Is Desirable, The Objective Of The Law, it forms part of the legislation and can be used as an interpretative aid. For the construction of the document. See A.G. v Prince Ernest Augustus of Hanover (1957).

Where the legislation of a formal character, where it is of constitutional or international importance, it should contain a preamble. Where it is to ratify international treaty it should contain preamble. E.g. African Charter,

Areas where it used:

1. Constitution
2. Treaties
3. By-laws: made to take care of special kind of people/ Local Enactments—LAKANMI V AG WESTERN REGION
4. International treaties
5. Ceremonial Statutes

6. ESTABLISHMENT OF A CORPORATION

ESTABLISHMENT: The section by which a body or institution is established. There are two ways of drafting the establishment section.

a. Where the body is being established for the first time ... see 1(1) CAMA. THERE IS HEREBY ESTABLISHED UNDER THIS ACT, A BODY TO BE KNOWN AS THE …..NAME…..
b. There shall be established … first establishment
c. There shall continue to be established …
d. Where the body in existence is being permitted to continue

THERE SHALL CONTINUE TO BE IN EXISTENCE A BODY TO BE KNOWN…… (which in this act shall be referred to as……)

a. The body shall be a CORPORATE BODY HAVING PERPETUAL SUCCESSION

The characteristics of the corporation:

a. Perpetual succession

b. Common seal
c. Power to sue and be sued
d. Power to hold and deal in property

7. INTERPRETATION

The interpretation clause, use the words like " means" or "include" and the word should be in inverted commas

S. 2: in this ACT, except where the context suggest otherwise—

Corruption means……

Court refers to……

Tribunal means…..

5. **SHORT TITLE: IT FORMS PART OF THE ENACTMENT,** it is the label by which the law would be identified. The short title must be short. The year of enactment must be included. The name by which the law is known. It is the nick name of the law and also referred to as CITATION. It tells you in the shortest possible means, the purpose of the law. The essence of the law is included in the legislation. It is distinguished by the year of drafting, the number of draft, you may include the purpose (amendment, repeal, consolidation or re-enactment)

Draft: The Law may be cite as THE COMPANIES AND ALLIED MATTERS ACT NO 2. 2016.

WHEN A NEW one is drafted the same year.

Law to repeal and replace an existing Law: COMPANY AND ALLIED MATTERS (REPEAL AND RE-ENACTMENT) LAW 2016

OR

For amendment: EVIDENCE (AMENDMENT) ACT 2011

FOR AMENDMENT OF THE CONSTITUTION:

CONSTITUTION OF THE FEDERAL REPUBLIC OF NIGERIA (FIRST ALTERATION) ACT 2016.

How no to write the short title: never write as … " The Companies and Allied Matters Act 1990"

But write the Companies and Allied Matters Act 1990

THE LEGISLATIVE POWER

National and State Houses of assembly. 491) & (6)

Note the Doctrine of covering the field. 4 (5) (laws made by the NA on a subject precludes SA from making the same law but when made must not be inconsistent with that made by the NA) (where the NA made law on area where it does not have legislative competence) AG Ogun v AG Fed.

Note the limitation. 1(3) CFRNs

DEFINITION OF TERMS

1. Sponsor: client who wants to present a bill to the legislative house

DUTIES OWED TO THE SPONSOR

a. Professional secrecy and confidence (privilege information)

Exceptions

- Commission of crime after advice by the counsel to desist
- Consent
- When suing for professional fee
- Order of the court
- Rule of law authorizing disclosure
- When the information is of common knowledge
- To defend himself in accusation by a client

b. Diligence and dedication R 16
c. Duty to advice the client honestly and candidly
d. Duty of Care(don't commit negligence)

EXCEPTION

- Negligence with respect to a case in court
- Where the client act against the instruction of the lawyer
- Where there is an agreement in a pro bono case not to be liable for negligence

e. Duty to avoid conflict of interest
f. Duty to represent the client within bounds of the law, 1 and 15 RPC
g. Duty not to charge excessive fees 49 RPC
h. Duty to consult the client in all the stages of the drafting where necessary
i. Duty to take full instruction
- Sufficient background information
- Object
- Means to achieve the object
- Likely problem areas

j. Duty to take instruction at solicitor's office
2. Legislative drafts man: the man who draft the bill
3. The Bill: document that has not been passed into law. End result of legislative drafting
4. Legislative drafting Instruction: instruction to draft a bill
5. Draft Process: process of drafting the bill
6. Legislative Process: moment from presentation of the bill to passage as a law
7. Executive Assent: when the President/Governor/ LC Chairman sign it into law.

DIFFERENCES BETWEEN LEGISLATIVE DRAFTING AND PROCESS

2. DRAFTING PROCESS begins when the sponsor give instruction to the DM while LP is the process from presentation of the bill to passage into law
3. DP is business of the drafts man while LP is concerned with the legislators
4. DP requires basic legal drafting skills while LP does not
5. The stages are different, receiving instructions, analysis ..

STAGES INVOLVED IN LEGISLATIVE PROCESS

a. First Reading: when the bill is first presented to the legislative house
b. Second Reading: day set aside for general deliberation on major principles of the bill
c. Committee Stage
d. Report stage: report of the committee
e. Third reading: discussing the report by the committee and passage into law when the report of the committee is adopted
f. Executive assent: 30 days for assent hence be passed by 2/3 majority of the houses.
6. The product are different: the product of LD is a Bill while that of LP is a law, act etc
7. LP is a law-making process while LD is not a law making process.

CHALLENGES OF LEGISLATIVE DRAFTING

1. Death of competent legislative draftsman
2. Hostility from the *espirit de corps* in the Ministries and departments
3. Scarcity of research materials and training programs
4. Draftsmen are unnoticed and unheard
5. Insufficient funding
6. Lacking of proper consultation before the Bill is put together.

SOURCES OF MATERIALS FOR LEGISLATIVE DRAFTING

1. CFRN
2. Party Manifestos
3. Electoral promises
4. Nigerian Law Reform Commission
5. Resolution of the legislature
6. Report and recommendations of civil society organisations and NGO's
7. Public opinion as expressed in the news media
8. Judicial decision
9. Memo from Government Ministries, Agencies and department
10. Government white paper: government decision on report of commission of enquiries

11. Newspaper, editorial, opinions and articles.
12. International obligations---12 CFRN
13. Law Dictionaries
14. English Dictionaries
15. The internet
16. Text book and journals

OWOLABI 'S PROFESSIONAL ETHICS AND SKILLS NOTES 2016/2017 SESSION

WEEK 12

RULES OF INTERPRETATION OF STATUTES

DEFINITION:

- The process of determining what something especially the law or a legal document means or the process of ascertaining the intended significance of the language used.
- Statutory interpretation is a process by which courts interpret and apply legislation. See Awolowo v Shagari

NB: any attempt to interpret the wordings of statutes with variation will go against its intendement

- Maxim: A varbus legis non est recedendum
- Note the importance of doctrine of binding precedent.

OBJECTIVE OF INTERPRETATION

1. To determine the express intention of the legislature in the language use, see Ojukwu v Obasanjo
2. To determine the intention of the legislation
3. To breathe life into the dead words in the statute in order to give effect to the intention of the legislature
4. The exercise of interpreting and or …….
5. Law makers are not invited to assist in the interpretation
6. The intention of the lawmaker must be found through the medium of words used.
7. Some words used in statutes appears vague such that the task of interpreting them may be likened to that of making subsidiary legislation
8. Examples includes "reasonable time" "inordinate delay" etc

METHODS OF INTERPRETATION

- Referential approach
- Purposive approach

LITERAL RULE

"if the words of the statutes are in themselves precise and unambiguous, then no more can be necessary that to expound those words in their natural and ordinate sense. The words themselves alone do, in such case best declare the intention of the lawgiver" see Sussex Peerage Case (1844) 11 CI& Fin 85

DEFINITION: interpretation of a document or a statute according to the words alone. See First bank of Nigeria Plc & ors v Maiwada & ors.

WHEN TO DEPLOY

- Where the words used in the statutes or document are clear
- Where the words are plain
- Where the words are unambiguous
- Awolowo v Shagari and Akintola v Adegbenro

WHEN TO AVOID

- Where it will lead to absurdity State V Gov. Osun State(2007) All FWLR
- Where It will occasion injustice
- Where it will defeat the intention of the enactment PDP v Rochas
- Where outcome will unreasonable. Bronik Motors v Wema Bank
- Where it will conflict other provision of the law

THE GOLDEN RULE

- Acknowledges the superiority of the literal rule as the first recourse
- Proceeds to modify it where the literal rule will lead to absurdity
- It will be employed where there is ambiguity of word as used in the statute
- Remedies difficulties inherent in the application of the literal rule

PURPOSE

a. It strives to discover the real and ultimate intention f the legislature. See Lee v Knapp

See also Ademolokun v Council of University of Ibadan

QUOTES: ENGINEERING INDUSTRY TRAINING BOARD V SAMUEL TALBOT

OWOLABI 'S PROFESSIONAL ETHICS AND SKILLS NOTES 2016/2017 SESSION

"WE NO LONGER CONSTITUTE ACT OF PARLIAMENT ACCORDING TO THEIR MEANING, WE CONSTITUTE THEM ACCORDING TO THEIR INTENT AND OBJECT"

MISCHIEF RULE

- Strives to unlock the intention of the legislature
- Strives to cover any lacunae in the law so that it will not be negatively exploited
- It consider the history of the law and the society
- The ruleadopts the purposive approach by considering the goal and or purpose of the entire statute.

THE HEYDON'S CASE PRINCIPLES=

- What was the law before the enactement
- Wjat was the mischief for which the old law did not provide for
- What remedy did the act (legislature) propose to cure the defect
- What is the true reason of the remedy.
- See Agbaje v Fashola

OBJECT

- The courts are enjoined to construe the Act in such a way that it will supress the mischief
- The Act must be construed to advance the remedy.
- The courts are enjoined to construe the Act is such a way that it will supress the mischief
- The Act must be construed to advance remedy
- The act must be construed to suppress subtle inventions and evasions aimed at continuing the mischief. See Smith V Hughes

THE MISCHIEF RULE AND JUDICIAL ACTIVISM.

- See SEAFORD COURT ESTATE LTD V ASHER- Lord Denning

"it is a process of supplementing the written words so as to give force and life to the the …"

- See SHAW V DPP

EJUSDEM GENERIS RULE

- General words which follow particular and specific words of the same nature as themselves take their meaning from those specific words. See EHUWA v OSIEC
- It construction of general wordswithin the special words which they follow. Fawehinmi v IGP

UT RES MAGIS VALET QUAM PEREAT RULE

- Let the thing have effect than be destroyed
- It recognises possibilities of slips in drafting
- The courts are enjoined where there are possible interpretations, to adopt the interpretation that will advance the law.
- Encourages interretation so as to gove effect to the legislative intention rather than defeat it. See TUKUR v GOvt. of Gongola

EXPRESSIO UNIS EST EXXLUSIO ATTERIUS RULE

- The express mention of one thing implies the exclusion of other things not mentioned.

See SEC v KASUNMU

FORTISSIME CONTRA PREFRENTES

- Applies mainly to commercial documents
- Where the word in a document is capable of more than one interpretation, it should be construed against the maker
- In construction of statute with ambiguity affecting taking away of rights of citizen, it should be construed against the government. See Okotie eboh v manager

NOSCITUR A SOCIIC RULE

- The meaning of doubtful words in a sentence contained in a statute may be derived form the meaning of other words accompanying it.

LEX PROSPICIT NON RESPICIT

- Mean law look forward not backward

- Enactment is presumed no to have a retrospective effect. See Afolabi v Gov oyo state
- See section 4 CFRN on powers of legislations

LEX LOCI REI SITAE

- Law of the place where the matter in dspute is situtate
- It applies mainly in succession matters relating to immovable properties of the estate of a deceased
- In distributionof immovable property, the law applicable is the law of the place where the property is situte. See Ghamson v Wobil

GENERALIS SPECIALIBUS NON DEROGANT

- General words must not derogate from special words
- Provisons made subject to another must be read suborniate to the provison it is made subject to . see Dada v Oshinkalu

LEX NEMINEN COGIT AD VENA SEU INUTILLA

- The law cannot mandate any person to perform a fruitless act
- The law cannot demand the doing an impossible act.
- The law dispense with strict compliance of a statute when its performance is impossible. See Ohuka v the State.. COP v Okoli

AIDS TO INTERPRETATION

- The interpretation Act
- The definition clauses
- Law dictionaries
- Decisions of superior courts defining certain words and clauses
- Other intrinsic & extrinsic aids- marginal notes, schedules, preambles, recitals, interpretation sections and long titles

CLASS TWO

ADVERTISEMENT AND IMPROPER ATTRACTION OF BUSINESS

- What is Advertisement? A deliberate of taking steps to promote market or publicise ones goods or services through media or other channels of communication for the purposes of attracting clientele
- Is it allowed?
- Per 39 RPC 2007
- Advertisement is allowed only to the extent that such is fair and proper in the circumstances and must not be contrary to the RPC. R 39(1)

ADVERTISEMENT

See Rule 46(2)

SOLICITING? Where lawyer goes begging for job. Rules 39 (3) (a-e)

- This can be defined as the lobbying, begging, beseeching or prevailing on another to grant the handling of a brief to lawyer
- A situation where a lawyer has canvassed for a particular
- In other words, if not for the begging, the lawyer in question may not have been granted the handling of the brief.
- Contrary to the case of advertising, soliciting is prohibited RPC rule 39(3)

Is it Permissible? No.

Things lawyer can do

- Reasonable and sober sign post
- Attaching qualification to complimentary cards
- Publish reputable directory of brief bio-data about himself. 39(4)
- See things under rule 40 as well.
- Signs and Notices rule 41
- Books and Article- R 42
- May include professional qualification after his name.

INSTIGATING CONTROVERSY OR LITIGATION see Rule 47

- A lawyer is forbidden from fomenting strife or instigating litigation
- He must not proffer advice to pursue a law suit without being consulted.

WHAT IS CHAMPERTY?

The lawyer have to go further to bargain to the proceeds of sale.

WEEK 13

LAW OFFICE MANAGEMENT (LOM)

NECESSITY OF A LAW FIRM—22 RPC… for the lawyer to be able to attend to his clients because he is not expected to call at the office or house except where the law permits

a. Lack of paid employment
b. Give prestige to the legal practitioner: or status
c. Desire to have self-employment or choice of independence or to be their own boss
d. For profit basis as it is profitable Rule 22 RPC
e. To realize the ambition of studying law

QUALITIES WHO INTENDS TO ESTABLISH OF LAW FIRMS

1. Honesty and integrity
2. Hard work and organization
3. Determination and commitment

For a lawyer to be successful you require: Knowledge and skills

Types of capital needed

1. Start-up capital: funds needed to provide facilities, things to put in place before operation of the law firm office accommodation, furniture, and files etc. commencing law business.
2. Working capital: funds for recurrent expenditures like salaries and wages, utility bills and cost of stationery: running cost

MEANS OF GETTING FUND or sourcing for capital

1. Personal saving, funds obtained from family and friends
2. Loan or over draft from bank
3. Family sponsor etc.

BUSINESS PLAN

A document containing information about the proposed firm, its goals and the financial projection.

CONTENTS OF BUSINESS PLAN FOR A LEGAL PRACTITIONER

- ❖ Name of the practitioner
- ❖ Name of the firm
- ❖ Business address
- ❖ Business startup date
- ❖ Type of funds
- ❖ Goals of funds
- ❖ Market competitors
- ❖ Capital requirement
- ❖ Borrowing requirement
- ❖ Security to be provided
- ❖ Use of funds
- ❖ Employment of staff, and
- ❖ Management system

CLASSIFICATION OF LAW OFFICES

- ❖ Small law office
- ❖ Medium law office
- ❖ Large law office

FACTORS IN DETERMINING SIZE OF LAW OFFICE

- Available facilities
- Number of lawyers
- The status of the lawyers in the firm

- Location of the office or such firm
- Client base (not in number but in quality of the brief): clients like shell, chevron, MTN, GLO etc.

Law offices are grouped into four:

1. **Sole practitioner ship**
2. **Partnership**
3. **Associateship**
4. **Sole proprietor**

NATURE OF PRACTICE

SOLE PRACTITIONERSHIP*:* it is the unit of practice involving a practicing alone, but employ support staffs to assist him in the office. DOES NOT employ other lawyers.

CHARACTERISTICS

- He provides the capital of the firm and manages it
- It is the commonest form of practice in Nigeria more than 70% of law firm in Nigeria are sole practitioner ship
- He does all the legal work alone since there is no other lawyer to whom work can be delegated.
- It is the smallest unit of organization of law firm in Nigeria

ADVANTAGES

- He takes all the benefit i.e. he does not share profit
- It enhances good decision making or quick decision making
- It is easy to set up
- He is more committed to his work
- He takes all the credit of the success of the firm
- He enjoys freedom

DISADVANTAGES

- He bears the risk and losses alone
- The firm may not survive after his death/ the practice dies with him
- He considers issues in the brief alone
- He can only rely on his own understanding of the law alone as a beginner
- It difficult for him to attract client as he is alone
- He has no time for holiday and relaxation
- It does not encourage specialization in comparison with when there are other lawyers present.
- His law practice dies with

SOLE PROPRIETORSHIP

This is one man law firm. In this instance, the lawyer establishes the firm himself but employs other lawyers to work with the firm as a salaried employee. It usually senior legal practitioners who have capital to establish themselves as sole proprietors. The relationship between practitioner-owner and other practitioners is that of employer and employee. The relationship is governed by a contract of employment with terms and conditions.

ADVANTAGES

- ❖ It enhances quick decision making
- ❖ The sole proprietor keeps the profits alone
- ❖ It enhances specialization
- ❖ It is easy to setup as there is less financial implication and less administrative procedure to follow before establishment.
- ❖ He enjoys freedom since there si no boss to control him
- ❖ There is division of labor between the owner and other practitioners.
- ❖ He is always more committed to work in the sense that he knows that his failure of the entire business

DISADVANTAGES

- ❖ He may not have time for holidays and relaxation
- ❖ It is difficult to enhance or attract client as a beginner as he is alone in the business
- ❖ The practice may die with him

- He bears all the risk alone

ASSOCIATESHIP:

Each Associate can employ any other legal practitioner to help in his practice. They share facilities and float the firm together but does not share client. A unit of law practice where two or more lawyers contribute the capital to provide facilities required for a law firm. The capital used to secure office accommodation and all other facilities. All the associates occupy the premises and share the office facilities, they equally contribute to wages and salaries of support staff but each will remain a sole proprietor because he owns an independent practice and separate clients within the associateship. One associate is a sole *practitionership*.

ADVANTAGES

- An associate keeps all the profits realized
- It is easy to set up as there is less financial implication.
- Reduced cost of management.
- It enables quick decision
- The office is better equipped.
- Enjoys freedom since there is no boss control
- An associate does not consider issues alone as there are other associates from whom he can seek advice

DISADVANTAGES

- Associate bears all the risk and loss alone
- An associate who is a beginner has Problem of attracting client as a beginner
- No freedom for holiday and relaxation
- The practice dies with the death of the associate

PARTNERSHIP

Two or more persons wishing to establish a law firm contribute capital to form a partnership to achieve a common goal that is profit making. Partnership is rarely set up in Nigeria because of:

- Lack of trust/confidence, fear, greed;
- Generation gap; indiscipline; ego;
- Inferiority/Superiority complex
- Impatience and incompatibility

Restrictions on the formation of partnership legal practitioners—see rules 5 RPC:

1. Cannot partner with a non-lawyer and cannot be formed with lawyers not allowed to practice in Nigeria. Rule 5 (1)
2. Cannot partner with a serving judicial officer or one partner elevated to the bench must have his name removed from the partnership 5 (3) RPC.
3. the continuous use of a deceased partner is not unethical 5(2)
4. the death of the partner brings the partnership to an end
5. No lawyer should hold himself out as partner by the use of word A, B, & Co. while he is practicing alone. See 5 (4)

ADVANTAGES

- Allows for division of labor and opportunity for specialization
- Risk shared because more lawyers are involved and this allows for stability
- It is easier to share funds and capitals to set up the firm since more people are involved.
- There is always time for partners to relax and go on holidays because duties can be shared among partners

DISADVANTAGES

- Due to the fact that many people are involved in partnership, element of dishonesty, greed and fear which will affect level of commitment to practice may come in
- Decision making is slow or delayed because of many people involved
- A partner might be liable for the act of a fellow partner done within the partnership business see the case of UNITED BANK OF KUWAIT V HAMMOND
- Rivalry and unhealthy competition

TYPES OF PREMISES OF A LAW FIRM/OFFICE

- existing building: a practitioner can convert suitable existing building into a law office. They may however, need considerable modification to meet the requirement of an office because most of them are designed for residential use.
- Purpose built accommodation or office: there are many purpose-built office accommodations in metropolitan cities state capitals and semi urban areas.
- Office in the home: Your personal house. A law office may be located in the home. There is no practice, convention or rule

LAW OFFICE STAFF/WORKERS IN A LAW FIRM

- **Legal practitioners—fee earners**: these are the practitioners in the law office who earn fees for the firm. the number of practitioners in the law office depends on the size and type of office.
- **Support staff (depends on the quality of practice and standard of the firm):** these are people who assist lawyers in the office. The number and type of supporting staff required in a law office depends on the sum

WAYS OF EMPLOYING STAFF OR SELECTING STAFF

1. By advertisement in news papers
2. Recommendation by an agencies and consultancies
3. Introduction by other colleagues
4. INTRODUCTION by existing and former staff
5. Inviting applicants from previous advertisement

PROCEDURES FOR SELECTION OF STAFF/ CRITERIA FOR EMPLOYMENT OF STAFF

1. Aptitude test
2. Conduct interviews
3. Employment base on qualification or assumption of competence

Letter of employment and its contents:

a. Job title
b. Job description
c. Date of employment
d. Location of staff
e. Working hours
f. Remuneration
g. Gratuity
h. Pension and other entitlement
i. Annual leave
j. Sickness and incapacity
k. Temptation of employment
l. Restraint of trade
m. Summary dismissal

- Remuneration
- Conditions of works
- Induction of new staff
- Administrative procedure
- Grievance procedures

INDUCTION OF NEW STAFF

- New staff need to be familiar with
- History of the firm
- Administrative procedure
- Disciplinary procedure and
- Grievance procedure

OFFICE MACHINE AND EQUIPMENT AND SUPPLIES

EQUIPMENT INCLUDES:

- Generators
- Vehicles etc

EQUIPMENT MACHINES

- Photocopy , Computers, telephone, facsimile machine, rubber stamp, document shreder

SUPPLIES INCLUDE

- File Tags, Letter Head, File Jackets, Legal Forms, Office Forms And Stationery

OFFICIAL MANUAL FOR EFFECTIVE ADMINISTRATION

- Office manual is defined as established system that regulates works and performance of task

It contains:

- Working hours
- Absence or lateness
- Attendance registrar
- Overtime work
- Confidentiality at work
- Salary increment, advancement and loan
- Holiday
- Bonus and profit
- Annual due
- Assignment of staffs
- File management
- Power management in the office
- Provision for office supplies
- Procedure for borrowing books

TIMING or TIME MANAGEMENT IN THE FIRM

To manage the time the firm needs to draw matters that are prioritized into things to do or important or urgent. Priority for important matters. This is usually accomplished with use of diaries which can be:

- Personal diary (pocket)
- Office Diary : central or general

FILING SYSTEM: documents are filed in either paper from or filed by electronic means. Movement of files must be controlled

They can be controlled by:

a. Registering incoming and outgoing files

b. Devising methods

- Manual files
- Computer

LAW OFFICE RECORDS: law firm keeps records of various

- Office manual
- Staff register
- Record of Equipment and machines
- Register of title document
- Register for Books and periodicals
- Master file register
- Internal telephone directory
- Incoming and outgoing correspondence

NOTIFICATION OF LAW PRACTICE- RULE 13 RPC:

Legal practitioners must notify the branch NBA of its location of its establishment.

Such notification must be made within 30 days of its establishment

The notice should contain:

Name of the lawyer or lawyers

Date of call to and enrollment

Address of the law office

The information is entered into the register of the NBA: Register the law office with NBA secretariat in the jurisdiction. Where there is change, name, address or other particular-- register with the branch

- Note and supply the content of the Notice to the NBA

OFFICE OF AN ASPIRING SAN—paragraph 15

- ❖ Good and spacious office
- ❖ Sufficient facilities
- ❖ Well-equipped library Quality library
- ❖ Sufficient partners (note the age of the partnership) or junior partners
- ❖ Sufficient junior staffs
- ❖ Sufficient supports staffs and efficient of trained Rule 15 Guidelines for the conferment senior advocate of Nigeria

CLASS 2:

INFORMATION TECHNOLOGY IN LAW OFFICE MANAGEMENT

Need for IT

1. Competition among lawyers
2. Distant briefing
3. Reduction of work loads
4. Safety of information
5. Security of information
6. Electronic filing system
7. Guards confidentiality
8. Effective for case management

Does the use of IT abrogate manual system of case management?

Challenges in the use of IT in Law office Management

1. Electricity
2. Lack of Knowledge about IT operations
3. Read 32(3) Cybercrime prohibition prevention Act 2015
4. IT Theft
5. Cost of IT Equipment
6. Cost of Subscription
7. It slow down productivity in the law office if not properly managed
8. Bad weather condition
9. Poor internet connectivity

VIRTUAL LIBRARY

Simply means an electronic library.

Advantages

1. May be lead to other law library outside the continent. E.g Lexis Nexis

Both the manual and virtual law library may be used together. See Rule 39(2) RPC and Rule 19(4) RPC.

LEGAL RESEARCH

Legal research is important for the purpose of knowing where to find the law. It helps in writing legal opinion, judgment, briefs, pleadings etc.

Lawyer must know his ways around the library and researching on the internet and virtual library.

Lawyer must know how to use physical and electronic law library.

Know how to use index of cases and legislations.

The need for legal Research

1. To be familiar with the changes in the law
2. To excel in analysis of a legal point
3. To be up to date in current trends in the law.
4. To know the law that govern a set of facts upon which the lawyer have been briefed

Emphasis: to be aware of what is the current trend of the law.

Guides on legal research

1. The lawyer must know the fact of the matter to research on
2. Elicit necessary information in respect of matter to be research on
3. Use analytical skills to classify the area of research into a legal category

SOURCES OF LAW

1. Received English
2. Nigerian Legislation
3. Case laws
4. Customary laws and
5. Islamic Laws

Finding the applicable law

1. Consult legal literature

Classification of legal materials

1. Primary sources—contains what the law is. Case laws and legislations
2. Secondary sources—books that describes and explain what the law is on a particular issue. E.g. legal text books
3. Tertiary—materials or books of law that provides information on where a law can be found.—e.g. index of cases, books, legislation, encyclopedia.

MEANS OF CONDUCTING LEGAL RESEARCH

1. Have different types of English and legal dictionaries
2. Develop point of note taking or jotting of key points
3. Make copies of vital documents
4. Consultations—to senior lawyers or colleagues that have expertise on a particular area of law.
5. Make habitual reading of case laws and pay more emphasis to ratio than the obita.
6. Be registered with professional Association to help in updating the particular area of the law.

CLOSING OF CASE FILE

The client file after conclusion of the matter is the property of the client. After the end of the matter, the file belongs client. Files must be kept in secure place for the sake of confidentiality.

How to dispose client file?

a. Save the documents separately before disposing of the client's file for personal copy
b. Notice of collection of the file must be given to the file—may be done through a letter.
c. File may be destroyed after a reasonable time if client refuses to collect the client.

What is a reasonable time?

Drafting a letter for close or collection of the file

1. Heading—the case name and suit matter.
2. Body—thank him for the case, request for collection of the file stating reasonable time and that the firm may destroy upon expiration

Advantages of given files to the client

1. Give the client the opportunity to peruse the file
2. For the client to know whether the work done is commensurate with the fees charged
3. It extinguishes the responsibility of keeping the client file on the law firm
4. Save space and tidiness of the office

MODE OF DESTRUCTION

Burn, tearing, shredding or manner adopted by the firm for proper destruction of the file.

Note: certain files may be kept as a reference materials for the firm.

Factors to be considered for destruction?

1. Nature of the cause or materials in the file
2. The need to return the materials to the client
3. Whether file contains special papers which ought to be retained indefinitely

4. Status of the client.

When to destroy a client's file?

- ❖ Time frame within which the matter becomes statute bared
- ❖ May be destroyed after a period of two or three years from the date of closure or date of notification within which the client may come and collect the file
- ❖ Closed file may be kept for a maximum period of 7 years

INFORMATION TECHNOLOGY IN LAW OFFICE MANAGEMENT

A. Administrative legal work
B. Financial transaction
C. Law library
D. Case management

IT DEVICES USED

A. Laptop/desktop computers
B. Hard drives
C. Instant messaging
D. Sms
E. Social media
F. Twitter
G. Cloud computing softwares
H. Smart phones
I. Legal paedia lexis nexis
J. Optical disc
K. Scanners
L. Photocopiers
M. Telephone
N. Modems
O. Flash drives
P. Fax machine
Q. Spread sheet

ADVANTAGES:

1. Efficient delivery of legal services
2. Easy retrieval and documentation of legal document
3. It increases the visibility of the law office
4. Decongesting the law office

DISADVANTAGES

A. Creativity and growth of professional is impaired as precedent is heavily relied/ depended upon without major change innovation
B. Without a back-up all information on client/ practice may be lost to hacking / virus
C. Loss of jobs for para legal

CHALLENGES

A. Lack of adequate power supply/electricity
B. Cost of acquisition
C. cost of maintenance
D. Virus
E. Computer illiteracy
F. Weather
G. Poor service by the information technology
H. Hacking / theft
I. Information may be interfered with erased lost

J. Adherence to the conditions for admissibility under the evidence act

SOLUTION TO CHALLENGES

A. Anti-virus and backing up systems
B. Not totally dispensing with the paper methods
C. solar power and inverters for electricity
D. Enactment of legislations to solve the challenges

WEEK 14

APPOINTMENT AND DISCIPLINE OF JUDICIAL OFFICERS

ESSENCE

1. Know the procedure to be a judicial
2. To know the value of respect to accorded to them

THE NATIONAL JUDICIAL COUNCIL

1. Appointment
2. Nomination
3. Discipline
4. They ensure equal treatment of judges
5. They oversee remuneration and management of affairs of the judges

NOTE THE NJC JUDGES AND PROCEDURAL RULES 2013

- Who are judicial officers? Judges of superior courts with the exception of magistrate court. See section 292 & 318 CFRN
- All officers presiding over superior court of record
- The judges of SHC, FHC, HC FCT, NIC, CCA, Khadis SCA, Justices of the CA and SC. S. 5(a-i) CFRN
- Superior courts are creation of the constitution

QUALIFICATIONS FOR APPOINTMENT

- For a judge of the HC, state or Federal, appointee must not be less than 10 years post call. Ss. 250(3), 256(3), 271(3) CFRN 1999
- Khadi of the SCA—Ten years at the Bar + qualification in Islamic Law, non-lawyers may also be appointed. 261(3)(a)(b) CFRN
- Judge, Customary Court of Appeal- 10 years+ Customary Law Experience. Ss. 266(3) 281(3)
- Justice, CA, 12 years post call. 238(3) CFRN
- SC—not less than 15 years at the Bar—231(2) CFRN

PROCEDURE FOR APPOINTMENT

- Federal and State Judicial Officers are recommended for appointment by the NJC for State is to Governor, Federal is to President.
- The new 2014 NJC Guidelines for appointment of judicial officers, regulate appointment of judicial officers of state, federal and FCT.
- Process now very tedious to ensure only credible persons get appointed to the Bench
- Notice is made to State Gov. by chairman State JSC informing him of the specified no of judicial officers needed for appointment. E,g 10 judges
- Copy of such notice must be sent ot Sec NJC
- The Sec will in turn advise the Chairman NJC on whether the budget of the year can accommodate the appointment. Rule 2(4) G&P 2014
- NJC chairman shall inform the C-SJSC to either proceed or reduce the number of the proposed judges
- The NJC directives is final and may only be reviewed by it. Rule 2 (5) NJC G&P 2014

If the SC JSC is directed to proceed;

1. The commission will call for applications from suitable candidates through its website, court's Notice boards and NBA offices
2. Notify CJs and judges alike to nominate suitable candidates for appointment
3. Notify the Chairman NBA branches in the state to recommend suitable persons.
4. After deadline for nomination, the C-SJSC will short list candidates twice the no of judges required. In so doing, he must consider legal experience, federal character in case of the FHC etc. Rules 3(6) of NJC G&P Rules. Shortlisted candidates names
5. The comments would be sent to the chairman, SJSC
6. The C-SJSC will place before his members shortlisted names for approval
7. He will then send successful candidates NJC Form A1 to fill and return to him within time
8. Chairman shall then place the names before the members for considerations together with the following docs;

a. Completed NJC Form A1
b. Comments from courts, NBA Branches etc.
c. Any petition or protest against any of them
d. Certificate of fitness from Govt. institution
e. Full SSS repot on each of them

9. The Chairman JSC shall then send a request to the NJC for recommendation of the selected candidates with accompanying docs.

DOCUMENTS TO BE ATTACHED TO THE FINAL REQUEST:

i. Minutes if the meeting of the SCJSC containing the list of the candidates
ii. All docs and materials used in the nomination
iii. Copy of legislation establishing the court
iv. Proof of adequate capital vote in the current budget of court
v. Proof of availability of accommodation, court hall, official vehicle, library and other facilities for the judicial officers. Rule 5 NJC G&P
vi. Chart showing essential particulars of each of the candidate nominated

10. NJC shall conduct interview for the nominees
11. If satisfied, shall recommend them to the Governor or the president as the case may be

ORGANS RESPONSIBLE FOR APPOINTMENT OF JUDICIAL OFFICERS

1. State judicial service commission—State
2. Federal Judicial Service Commission
3. Judicial Service Committee of the FCT
4. National Judicial Council NJC (see 3rd schedule Part III of the CFRN As amended
5. President of Nigeria
6. Governor of a state

7. The senate of the National Assembly
8. State House of Assembly

Note the functions and membership of each organ as contained in the constitution

Most importantly the same bodies that appoint is vested with the power to discipline erring judicial officers

Such discipline include removal from office or suspension from office (the recent justice Salami's case is an example. The NJC only have the power to recommend punishment being the apex disciplinary body but does not have power to remove. Recommendation is to the President or Governor but the NJC can suspend.

DISCIPLINE OF JUDICIAL OFFICER

1. Removal From Office S. 292(1) CFRN as amended. A judicial officer will not ordinarily be removed from office except as laid down by the constitution
2. Grounds for Removal: infirmity of mind or body, misconduct or contravention of the Code of the Conduct 292(1)(a)(b) CFRN
3. Note the NJC only recommend for removal see 3rd Schedule Part I para 21(b) CFRN

CODE OF CONDUCT FOR JUDICIAL OFFICERS

- There is a code of conduct made by the NJC for all judicial officers as to what is expected of them in the discharge of their duties
- The code extends to all judicial officers including those of inferior courts, magistrate courts, Area courts etc
- A judicial officer must not allow his social activities conflict with his judicial duties e.g he should not accept chieftaincy title in office. Etc

HOW IS COMPLAINT LAID?

1. Complaint against a judicial officer is usually directed to the NJC
2. The NJC set up a Committee to investigate the allegation
3. The officer in question will be notified in writing and give time to react to the allegation.
4. Note that sanctions other than removal may be imposed by the NJC where allegation is proved, or
5. Removal may be recommended to the governor or the president
6. If the officers is a chief judge of the Federation or of the state removal must be sanctioned by 2/3 majority or houses of Assembly for the CJ of states

LECTURE PART II

DISCIPLINE OF LEGAL PRACTITIONERS

1. How many professional offences are there? Section

a. **Infamous conduct** in a professional respect: act that will make a layman loose respect for the Legal profession. Conduct unbecoming of a legal practitioner. Must be done in the cause of his carrying out his duties.

❖ If it is shown that… in the pursuit of his profession, has done something with regards to it which would be reasonably regarded as disgraceful…then it is open… to say that he has been guilty of infamous conduct in a professional ALLISON V GENERAL COUNCIL MEDICAL EDUCATION AND REGISTRATION. NBA V ALABI, OKIKE V LPDC, NDUKWE V LPDC.

❖ It must be an act in the course carrying oyt his professional respect. Action must be done in a professional respect. RE IDOWU and NBA V EDU

❖ **Determining infamous conduct?**

❖ **There is no particular statute where this could be gotten.**

- Professional misconduct—Rule 55 RPC—more preferred for Bar II
- Court should look at the severity of the case—submitted most appropriate
- Sometimes some offences are less weighted like decisions not practice.

❖ What happen where misconduct amounts to a crime? LEGAL PRACTITIONERS' DISCIPLINARY COMMITTEE the criminal action should be decided first. should stay the Proceeding and refer to the appropriate court and await the decision of the court.

❖ **Why is this so?**

❖

❖ MDPDT v OKONKWO and DENLOYE V MDPDC

- The person charged must however deny the allegation. Where admits, the tribunal need not await the outcome of the court. Until in a duly constituted court of the offence. Dongtoe v Civil Service Commission Plateau State & Ors.
- Where the wordings of the charge is couched in such a way that it does not exhibits a criminal element, the committee can go ahead to try the misconduct as charged without waiting for the outcome of the court. See NDUKWE'S Case (Failure to hand over proceeds of judgment debt and stealing) Cf. MDPDT v Okonkwo (murder/manslaughter).

b. OBTAINING ENROLMENT BY FRAUD:

❖ What is Obtaining Enrolment by fraud?

❖ Misrepresentation of pre-requisite qualification. It means where there is a fraudulent act or misrepresentation of material facts as to the status of a person to an authority to secure his enrolment in the Supreme Court. E.g. forgery of certificates, misrepresentation of personal data, the nature of the offence is criminal.

❖ Would it make a difference if the representation arose from a mistaken belief?

❖ There is thought that it was true. So there is no mensrea.

- What if the misrepresentation turned out to be correct subsequently? Would the person be guilty of the offence? Time is the determining factor. When was the representation made? What is material is what the person knew to be the position at the time of the misrepresentation.

c. CONDUCTS NOT AMOUNTING TO INFAMOUS CONDUCTs BUT (NOT COMPATIBLE WITH THE STATUS OF Legal Practitioner)

Conduct not amounting to infamous conduct, but which is incompatible with the status of a legal practitioner. (Conducts incompatible with the status of a legal practitioner).

Defined as offences done outside the pursuit of a legal practitioner profession. One which tarnishes or is capable of tarnishing the image of the profession.

This standard is borne out of the statutory need for a legal practitioner to be of good character at all times.

What happens where it consists of a criminal elements: find out whether it consists a crime you go to court or when he accepts LPDC tries him straight.

Examples:

n. Habitual drunkard
o. Notorious fighter
p. Incessant shoplifter
q. Brothel patronizer
r. Notorious gambler
s. Bigamist,
t. Coveting client's spouse

d. CONVICTION OF AN OFFENCE NOT COMPATIBLE WITH THE STATUS OF A Legal Practitioner

What are the pre-conditions?

a. There must be a conviction
b. Such conviction must have been by a court in Nigeria
c. One conviction
d. There must be no pending appeal
e. The offence must be one incompatible with the conduct of a legal practitioner.

ABUAH v LEGAL Practitioners Committee (Re Abuuah)

Forgery by Legal Practitioner to obtain settlement money.

SANCTION BY THE COMMITTEE:

a. The committee shall consider the nature of the offence or the deed that was incompatible with the status or position of a legal practitioner. See Re Abuah

ARGUMENT: that punishment by the LPDC after the conviction by a court amounts to double jeopardy.
It is done to preserve professional standards and not to serve as punishment. Section 36(9) CFRN.
Can the LPDC still punish where criminal offence and conviction was struck off on technical grounds Re King (8145)

PROCEDURE:

PROCEEDINGS BEFORE THE LPDC:

a. Possible persons under the LPDC rules to which matter can be reported Rule 3LPDC Rules:
b. A client writes a petition
c. To where is the complaint forwarded ? CJN, PCA, or any of the justice of CA, Chief Judge OF FCT, chief judge of any of the SHC, Chief Judge of the federal High Court, chairman of the BOB, chairman of NBA, President of NBA, AGF and AGS,
d. The complaint goes to the NBA
e. What happens at this stage? Rule 4 : causes the case to be investigated. To determine whether there is prima facie case against the LP, the report shall be sent to LPDC
f. What are the required documents t accompany the report of the findings?

The report on the investigation
The petition
The documents relied i.e. all the pieces of evidence relied upon

g. NBA sends to the secretary of the LPDC

Documents relied upon
Copy of original complaint
The report of the NBA
SEE THE LPDC RULES

Standard of proof: preponderance of evidence or balance of probability

ARGUMENT: that it is a breach for the NBA to take legal action against
PUNISHMENT
Rule 17

1. Striking off the name of the LP off the roll
2. Suspension from pratice as an LP
3. Ordering a refund of monies or documents of the clients in the possession of the erring LP
4. Admonition or caution

A LP may have his offence aggravated where he fails to obey the order of the committee.

APPEALS LIES TO THE SUPREME COURT

Aladejobi V NBA, Akintokun V LPDC (2014)
Duration : within 28 days

RESTORATION

Can there be a restoration of a struck off name or cancellation of a suspension?
Considerations:

a. Gravity of the offence
b. Repentance
c. Amount of Genuine remorse by the LP
d. Consider whether he has become so fit and proper overtime

TO WHOM IS THIS APPLICATION MADE?

It depends

LPDC and SC

SUPREME COURT: when it (the misconduct) is carried out in the face of the court or any court

APPELLATE: APPEAL FROM THE LPDC

WHAT PUNISHMENT THE SC MAKE:

a. Striking off the name off the roll
b. Suspension

c. And admonition

But the SC has to gazette the punishment

THE CHIEF JUSTICE OF NIGERIA

Disciplinary jurisdiction of the CJN: Section 13(2)

Make a representation in the matter or order suspension pending the outcome of the charge. This action is independent of the outcome of LPDC

OWOLABI 'S PROFESSIONAL ETHICS AND SKILLS NOTES 2016/2017 SESSION

WEEK 15

ADVOCACY PRACTICE

- **MEANING OF ADVOCACY?**
- It is not limited to lawyers. Other professions too do advocacy. Classic definition means pleading somebody's case.
- Must you be a lawyer to be involved in advocacy? You necessarily need not be a lawyer. Example—Civil Right Organizations etc. You don't have to be a lawyer to plead a cause. The difference is that, in law, you must be a legal practitioner before you can advocate in law.
- Is there a relationship between oratorical skills and advocacy? There is a relationship between the two. But advocacy demands more than oratory skills. Therefore a lawyer needs a good communication skill not necessarily argumentative or oratory.
- These skills are needed in the examination of witnesses and arguments and presentation of briefs. Etc.

SKILLS NEEDED IN ADVOCACY

- Analytical skills
- Research skills
- Communication skills
- Persuasion skill
- Knowledge of law and fact
- Writing and drafting skills: a lawyer must write well

WAYS OF PLEADING A CAUSE/ADVOCATE?

- Verbal/vocal
- Written format
- Other Non-Verbal Communication.

OWOLABI 'S PROFESSIONAL ETHICS AND SKILLS NOTES 2016/2017 SESSION

TRIAL ADVOCACY

- Reference to vocal skills which a legal practitioner uses in proceedings before a court or other bodies
- This may involve examining, cross examining witnesses or generally addressing the court in respect of an application or the entire case
- Advocacy will involve marshalling relevant law and facts to claim or defend.

IS ORATORY SKILLS NECESSARY TO BEING A GOOD ADVOCATE?

- Oratory skills is necessary to be a good advocate
- A lawyer's advocacy is circumscribed by the law. He is to plead his cause within the confine as permitted by the law. An orator properly so called may not be so limited.
- Advocacy needs communication. Advocates must communicate hence the essence and goal is not achieved.
- Oratory skill helps in good communication.
- When speaking in court, body language evinces good communication and allow you persuade the judge to take records of your pleas.

ORAL ADVOCACY: Oral advocacy is diminishing due to written address.

CAUTION TO TAKE WHEN ADVOCATING

- Be concise and straight to the point
- Convey point in precise manner.

ORDER AND DIRECTION OF EXAMINATION

1. EXAMINATION IN CHIEF

FUNCTIONS:

- Introduced undisputed facts
- State case for the party
- Lay foundation for the introduction of exhibits
- Must relate to relevant case. S. 215(2)

DISTINCTION BETWEEN CRIMINAL AND CIVIL SUIT

- Front loading is only applicable in civil and not in criminal suit.
- Adoption of witness statement on oath is only applicable in civil cause not in criminal matters.
- Proof of evidence and witness statement on oath are not the same.
- There is need for introduction/laying proper foundation before the adoption of statement on oath in civil causes.
- There is no dock in civil case.

FORMS OF PRELIMINARY QUESTIONS BEFORE ADOPTION OF STATEMENT ON OATH

- The name address and occupation of the witness?
- The relationship of the witness with the party (ies) in favour of which he is giving evidence?
- Making of statement in writing and means of identifying the statement?
- The last two questions asked relating to the document is called laying proper foundation
- Ask question on what the witness intends to do with the witness statement on oath?
- Apply to tender the statement/document before the court
- Documents referencing where necessary after admission by court.
- Contained in the list of documents to be relied upon.

Procedure for tendering the document front loaded?

- Lay proper foundation

Where documents sought to be tendered are not original copy

- Further questions to be asked?

Lay foundation to tender secondary evidence showing the destruction of the primary evidence.

The secondary evidence to be tendered being a public evidence is a CTC of the primary

** Documents not admissible under any circumstance without compliance with laid conditions are appealable if wrongly admitted even if parties agreed.

*** Documents not admissible without condition may be admitted if agreed upon by the parties… ALADE V OLUKADE

LEADING QUESTION

- Definition 221(1)
- Any question suggesting an answer
- Generally not allowed in EIC s. 221(2) EA
- When allowed: 221(3) EA.
- Allowed with the permission of the court in:

** Matters that are introductory or undisputed
** Matters sufficiently proved in the opinion of the court
** Admitted facts
** Hostile witness. S. 230 EA
** When allowed by the court
** In Cross Examination—221 (4) EA

TECHNIQUES OF LEADING A WITNESS IN CHIEF

1. **Ask open ended questions put in sequential order:** to describe or narrate the event leading to dispute. E.g. what happened on that day?
2. Use Prodding questions: it suggest that the witness should give a further narration of the event. E.g. after that, what happen? Please go on, please continue
3. Use incremental /prompting question? More precise detail is required by this type of question. E.g. How far is your house to the scene? Did you notice anything about the vehicle? When you finished shopping, did you return home or go to somewhere else? What was the next thing you did
4. Forced choice question: more of a closed question because it narrows the field of response. E.g. was he driving in a car or a jeep? Did you go to the house or you went somewhere else
5. Do not ask leading questions

EXAMPLE 1

1. W: I saw the accused at the scene of the robbery
2. Q: what was the colour of dress the accused was wearing at the time of the robbery?

PROPER WAY:

1. Describe the accused as you saw him?

EXAMPLE 2:

1. A: Babalola came to the party in a new dress
2. Q: what was the colour of the dress?

EXAMPLE 3

1. A: the accused was seen in a car along the Lekki-Ajjah road?
2. Q: what was the registration number of the car used for the robbery?

PROPER WAY

a. What was the registration number of the car?
b. Look at the exhibit ……, was it the same registration number?

EXAMPLE 4

1. A: the accused was arrested in the vehicle used for the robbery?
2. Q: what was the registration number of the car used for the robbery?

NB: cases where there is a general presumption on a fact, don't ask question on such conclusion, lay proper foundation.

CROSS EXAMINATION

- Section 221(4) EA—leading questions may be asked
- 214(2) EA—witness examined by a Party other than the party who call him
- Note: 216 and 217 on cross examination by co-defendant and prosecution
- Under section 216 EA:

a. Where prosecution called a witness:
b. If there are more than one defendants, all the defendants will be allowed to cross examine the witness before the prosecution can re-examine the prosecution witness.

Under section 217 EA:

- Defendant's Witness is called;

a. More than one defendants;

b. A witness called by a defendant will be cross examined by the co-defendants before the prosecution can cross examine the witness.

- Order of cross examination where there are more than one accused person
- NB: it is only applicable where the co-defendants are represented by different counsels or making their cases personally and separately.
- By extension it is applicable civil cases in the same order.

PURPOSES OF CROSS EXAMINATION- 223 EA

1. To contradict the witness and weaken evidence in chief
2. Put up case of adverse party
3. Extract facts from the witness which is favourable to adverse party case
4. Test veracity, accuracy or credibility of witness
5. Shake his credit, by injuring his character
6. Elicit facts with which to cross examine other witnesses
7. Discover who he is and what his is position in life.
8. To injure the character and enhance your case.

QUERY: IS THE SKY THE LIMIT IN CROSS EXAMINATION?

- No, there are limitations:

a. Questions that are not relevant or reasonable are not allowed. 225 EA

b. Indecent and scandalous questions are not permitted 227 EA

c. Annoying and insulting questions 228 EA

d. 215(2) EA: Cross examination must relate relevant facts but need not be confined to the fact in which the witness testify to in the examination in chief

Cross examination of witness called to produce document? He is not subjected to be cross examined unless called as a witness. 219 EA—SUBPOENA DUCES TECUM

TECHNIQUES OF CROSS EXAMINATION

1. Ask Closed Questions
2. Ask confrontational Questions: before it can be used there must be external evidence
3. Ask Probing Questions: search for weakness in testimony of the witness
4. Do not ask open ended questions: they are dangerous and may likely give the witness grounds to re-establish his veracity
5. Use **Insinuations**: mark out statement and request admission or denial by the witness
6. When cross examining an expert witness, note the requirement in civil

AVOID THESE:

1. Ultimate questions
2. Don't ask questions to explain or fill gaps
3. Long or fishing questions
4. Don't ask question from expert that you don't know the answer
5. Note ten commandments of cross- examination

They are:

- .Be brief
- Ask short questions and use plain words
- Ask leading questions (s. 221(4) E.A)
- Ask only questions to which you know the answers (For Expert Witness)
- Don't let witness repeat testimonies in examination in chief
- Don't let the witness explain
- Listen to the witness answer
- Don't quarrel with the witness
- Avoid one question too many.

- Save the argument for the closing address

6. Never repeat the answer of a witness during examination

RE-EXAMINATION—see sections 214(3) and 215(3) of the Evidence Act

- Definition: used for the explanation of referred to in the cross-examination which are ambiguous.
- Limitation: can be directed to the explanation of matters referred to in cross examination and if a new matter is , by permission of the court introduced in re-examination, the adverse party is given opportunity to cross examine. See 215(3) EA

NUMBER OF WITNESSES TO BE CALLED- 200- 204 EA

1. Party not bound to call number of witnesses—section 200 EA
2. Note: treason and treasonable offences: 201 EA
3. Charge of perjury: 202 EA
4. Exceeding speeding limit: 203 EA
5. Sedition: 204

ADVOCACY PRACTICE PART II

QUESTIONS LEADING AN EXPERT IN EVIDENCE?

1. State name, address and occupation
2. The qualifications and experiences of the expert?

REFRESHING MEMORY- 239—241 EA

1. Oral evidence must be direct. 126 EA
2. Note even when interpreter is used:

a. Interpreter to be called as a witness otherwise hearsay

Exceptions to Giving Evidence from Memory—Section 239 EA And

Amoo V Queen: 5 weeks after incident can't be allowed

- Application for leave of court is required for a witness to refresh his memory
- Witness may refresh memory his memory in the course of examination.—239 (1)

Refreshing Memory may be done by:

a. Reference to writings made by him at the time of the transaction in respect of which he is giving evidence
b. Reference made by him so soon after the time of the transaction in respect of which he is being questioned which the court considers to be fresh in his memory at the time he put it down into writing.
c. Reference to writing made by another person at the time of the transaction or so soon thereafter and the witness read it at the time of the transaction in question or so soon thereafter. The witness must be the writing to be true at the time he read it.
d. An expert may refresh his memory by reference to professional treaties.

- By extension, a witness may testify to facts mentioned in the document upon which his memory is being refreshed even if he recollects not the facts in the document but he is sure that facts in the document were correctly recorded—240 EA
- Document for refreshing memory may be requested by the adverse party and he have right to conduct cross examination of the witness on such documents.
- See IFENADO V STATE
- R V LOCKWOOD
- **LAYING FOUNDATION IN REFRESHING MEMORY**

- You said you can't remember how many persons who signed the agreement but you recorded the names in your jotter
- That jotter where is it
- We apply to the court to allow the

LIKELY GROUNDS OF CROSS EXAMINATION:

- Writing does not tallies with the case
- What constitute soon thereafter?

HOSTILE WITNESS

- Definition of Hostile Witness: An exception to the rule that a party is precluded from controverting the testimony of his witness.
- A witness may be controverted if the court is of the opinion that he is hostile—231 EA
- Leave of court is required to declare a witness hostile
- Leave of court is similarly required to lead evidence against the witness
- Departure is also created to the rule that Leading questions cannot be asked in Examination in chief.
- Also a departure to the rule that a party cannot cross-examine his witness

CONTRADICTING HOSTILE WITNESS—231 EA

1. Direct evidence that the witness is unworthy of character
2. Proof of former inconsistent statement

Cross- Examination as to previous statement in writing—232 EA

1. Such statement must be related to the matter in the instance proceeding in which the hostile witness is being cross examined
2. The statement need not be shown to the witness before cross examining him
3. If the statement is for the purpose of cross examination, it must not be proved
4. If the statement is proved, better to seek refuge in contradicting the witness and hence the statement must be shown to him
5. Note: the court have right to demand the statement use for the cross examination of the hostile witness at any stage of trial

Impeaching the Credit of Hostile Witness—section 233 EA

1. By evidence of persons that testify to unworthy credibility of the witness as a matter of their personal Knowledge
2. By proof that the witness has been bribed or has received other corrupt inducement
3. By proof of former statement inconsistent with any part of his evidence,

PROOF OF PREVIOUS CONVICTION 248 and 250

LAYING FOUNDATION FOR TENDERING EVIDENCE OF PREVIOUS CONVICTION

1. Confirm the name again
2. Draw attention to suit number and parties in the previous case and court
3. Ask if he is the same as the party in the suit
4. Tender from the bar the CTC of the judgment in the case
5. Can tender evidence from the central criminal record registry under the ACJA- sec. 16 and 15 ACJA.

You cannot cross examine a witness on evidence that is not tendered in evidence or not before the court. See 248(2)

HEARSAY- 37 EA

- Statement oral or written made otherwise than by the witness

COMPUTER GENERATED EVIDENCE- 84 EA (there is usually a certificate of statement attached in practice authenticating the evidence)

ADMISSIBILITY OF STATEMENT IN DOCUMENT MADE PRODUCED BY COMPUTERS

1. Statement of facts contained in a computer generated document is admissible in proceedings in which direct oral evidence will be admissible- 84(1)
2. Conditions of Admissibility—

a. Document containing the statement was produced by a computer during a period of regular use of the computer for storing or processing information for the purposes of activities regularly carried out over the period whether for profit or not, by corporate or natural person

- Content of the condition

i. Regular use of the computer
ii. Use is for storing or processing information
iii. Activities in which the computer is used for must be regularly carried on over the period of in which the document sought to be tendered was produced
iv. The activities may be for profit or nonprofit cause/purposes
v. The activities must be carried on by either corporate or natural person

b. The computer is regularly supplied with the type information contained in the document to be tendered over the period in which the activities is carried on

c. That throughout the period of the activities—
i. The computer is working properly
ii. If not working properly or out of operation during the period, it does not affect the production of the document sought to be tendered or the accuracy of its content.
d. That the information in the document is output of the information supplied to the computer in the ordinary course of those activities
3. If the period over which the regular use of the computer is made, the document to be tendered was—
a. Made by combination of computer operating over that period
b. By different computers operating in succession over the period
c. By different combination of computers operating in succession over that period
d. Other manners involving successive operation over that period of more than one computers or combination of more than one computer—

All the computers shall be treated as one computer.

4. Where computer generated documents is to be given in evidence in any proceeding, a **CERTIFICATE** will accompany it which shall—
a. Identify the document and the manner in which it was produced
b. Give particular of appropriate device used in producing the document as to signify that it was produced by a computer
c. signify the relationship of the document with the activities carried on when it was produced by the computer
- be signed by person occupying the office in relation to operation of the computer or management of the relevant activities.

❖ The certificate shall be a proof of the matters stated in it and shall serve as a sufficient for the purpose of the determining the knowledge and belief of person stating it.

5. Determining the veracity of information supplied to the computer
a. Information is dully supplied when supplied in the appropriate with or without human intervention through the appropriate equipment
b. Information supplied to computer other than the in the course of the activities of supplying such information but supplied with view to its being taken as supplied in the cause of the activities is deemed supplied in the cause of the activities.

Document is taken to be produced by a computer where it is produced directly by it with or without intervention by means of appropriate document.

OWOLABI 'S PROFESSIONAL ETHICS AND SKILLS NOTES 2016/2017 SESSION

WEEK 16

ALTERNATIVE DISPUTE RESOLUTION

NEGOTIATION, MEDIATION AND MULTI-DOOR COURT HOUSE

In the recent past the trend was dispute litigation. However, in recent times Alternative Dispute Resolution has occupied a pride of place.

a. The advantages of ADR over litigation:

Faster

Confidentiality is preserved

Preserves the relationship of the parties

Usually a win-win situation for the parties, both parties come to an amicable agreement

Helps to decongest the court

It is less formal as the strict procedural rules applicable litigation do not apply to ADR

Less expensive than litigation.

In ADR the arbiter can be appointed by the parties.

ENABLING PROVISIONS

The rules on pre-action protocol- O. 3 r. 2 HCL SCPR and the pre-action counselling certificate in Abuja encourages ADR

- Similarly O.25 of HCLSCPR on CMC encourages ADR. And R.15(3)(d) RPC
- The object of the lagos Rules is to promote efficient and speedy dispensation of justice-- see preamble 1(b) lagos
- Amicable settlement of dispute by way ADR (preamble 1 (c) HCLSCPR)
- All originating processes are screened for suitability for ADR and accordingly referred to the Lagos Multi Door Court House or some other ADR Institution—O.3 R 11 Lagos
- Every claimant in actions begun either by writ of summons or originating summons is required to frontload the protocol Form-01—see format of the form
- Agreement in ADR when endorsed by an ADR judge becomes a consent judgment enforceable under SCPA
- One of the purposes by the CMC is the promotion of amicable settlement of dispute. O.25 r. 1 Lagos.
- The agenda for a judge at the CMC making referrals to the LMDCH-O. 25 r 2
- The ADR judge may give Directive under the LMDCH (usually three judges) on matters referred for ADR. Failure to comply attracts sanctions order 25 R 6 Lagos .
- Note that the Lagos Multidoor court house Rules are more elaborate than the Abuja rules.

NEGOTIATION:

It is the rudimentary alternative dispute resolution method. It is a face to face interaction between two opposite parties in a dispute. It is the commonest of all the forms of Alternative Dispute Resolution. Process whereby parties to a dispute seek a solution to their differences in a voluntary and direct manner.

- ❖ It may take any of the forms of communication, e.g. Oral or written

i. Direct communication in a meeting

ii. By telephone

iii. SMS

iv. Email

v. Correspondence

- Direct, limited to the parties, without the intervention of any third party. May take place before an action is filed or even after such an action.
- The "terms of settlement" is agreed upon and filed in the latter case.
- The court likes after the adoption of the terms of settlement

ROLES OF LAWYERS IN NEGOTIATION

Will negotiation process not render the services of the legal practitioners' unnecessary?

- ❖ Lawyers are involved in negotiation as ADVISERS- Order 3 rule 2 Lagos, see the pre - action counselling certificate in the FCT Rules.
- ❖ Lawyers are expert negotiators
- ❖ Lawyers are evaluators

- ❖ Lawyers are Direct Negotiator- Order 13 rule 24/34 Lagos
- ❖ Lawyers facilitate the process of giving the force of law to the agreement.
- ❖ Lawyer draft negotiated/settlement agreements.

*****FACTORS THAT AFFECT BARGAIN IN NEGOTIATION**

*****IN NEGOTIATION, BARGAINING DEPENDS ON**

1. The legal rights of the parties under the law, contract, customs etc.
2. The interest sought to be protected—the desire, needs, concern of each party, a party in a defamation case may be interest in his reputation.
3. The Power/influence of the parties: coercive power; e.g. NUPENG may withdraw their drivers causing dislocation.

STRATEGIES IN NEGOTIATION

Note that with the absence of safeguards e.g the rule of evidence and procedure, strength of the parties plays a major role in negotiation.

2 MAIN BOARD STYLES- MANNER OF DELIVERY, NEGOTIATION

1. The co-operative: the system whereby the negotiator deploy all his came towards settling the dispute. It is as well conciliatory. Using BATNA
2. The competitive/confrontational: the negotiator negotiate with the list of his demand and he is not consciousness of the interest of the other party
3. However a 3rd approach is the collaborative/principled/ problem solving: -- takes a win-win situation. It is close to the corporative stage. The essence of the ADR system is a win-win out come. As opposed to litigation.

STAGES OF NEGOTIATION

1. PREPARATION/ PLANNING STAGE

- Know the claim of your client e.g. in the accident case,
- Specify the required both general and special including future loss
- If it involves in injunction? It should be included as part of the term of settlement and consent judgment.
- Does your client wants an apology in a defamation case, can it be negotiated?
- Know the venue
- Stages and procedure of the negotiation
- Necessary arrangement to facilitate the negotiation process
- Identify the issues.
- Choose the strategy.
- BATNA- BEST ALTERNATIVE TO NEGOTIATED AGREEMENT. The bottom line of no more negotiation. Your fallback or the bottom line, the last point at which the party walks away; develop the BATNA with your client.
- WATNA: worst case scenario if the BATNA is not accepted
- Decide your BATNA- your fallback or the bottom line, the least point at which the party walks away; develop the BATNA with your client
- BATNA may be difficult where interest of the client transcend monetary compensation.
- A BATNA must take into consideration all relevant factors
- Know your opponent BATNA/WATNA: worst Alternative to negotiated Agreement. In the accident case, the chances of losing the case no matter how slim-develop the BATNA with your client.
- Know your WATNA—e.g slim chances of winning the case. Things that cold the defeat the case if recourse is made to the court for litigation.

2. **First contact stage**—preliminary/exploratory; 'without prejudice' during negotiation see nba v fawehinmi; but note that where an agreement has been breached, parties are bound, "without prejudice" will no linger apply—cfao v olukoga.

3. **AGENDA SETTING**—parties agreed on the agenda and the ground norm for the negotiation. Like when a party speaks the other should shut up.
4. **BARGAINING STATE**: where parties will use all the negotiation strategies.
5. **CONCLUSION-** preparation of agreement, note the areas where no agreement is reached.

6. EXECUTION STAGE:

** note the provision in s. 4(1)&(2) of the Lagos Law- for the enforcement of any settlement agreement under the SCPA. See the appropriate Rule under O. 25 Lagos

7. Is it a court assisted ADR or ADR on a matter already in court? Terms of settlement to be made part of the court judgment. Consent judgment—preparatory to its enforcement.

MEDIATION

It is special type of improvement on negotiation. It is a a voluntary ADR method which involves a neutral third party who use his good offices to assist the parties scheme achieve a negotiated settlement of their dispute.

Mediator may be selected by mutual agreement and he assist the parties as the facilitator of the amicable settlement of the dispute.

- WHY MEDIATION
- Mediation is similar to negotiation with the major fdifference that meditation oinvolves a neutral third oarty the mediator.
- Mediation is available where negotiation

TYPES:

FORMAL: in lawyers chambers, judges chambers, court houses , arbitration houses.

AND INFORMAL MEDIATION

QUALITIES OF THE MEDIATOR

- ❖ Impartiality, independence, neutrality, integrity- he must be insinuated
- ❖ Ability to get the parties talking, trusting, especially where ego is at play
- ❖ Ability to convince the parties to give meditation a trial
- ❖ He should be flexible and skill of adaptability
- ❖ He should have experience.

STAGES OF MEDIATION

1. PREPARATORY STAGE

- ❖ General preparation
- ❖ Venue, pre mediation agreement
- ❖ Informing the court and taking a long term adjournment/date.
- ❖ But note that as with all the Dispute Resolution—limitation Act /law does not cease to run.

2. THE OPENING STAGE

- ❖ Introduction
- ❖ Non-disclosure agreement
- ❖ Opening statements
- ❖ Privilege—FAWEHINMI V NBA

3. AGENDA SETTING/ ISSUE IDENTIFICATION STAGE

4. **BARGAINING STAGE:** allow free bargaining at this stage.

- ❖ Mediator may suggest solution
- ❖ Uses persuasive tactics

5. AGREEMENT

- ❖ Concluding agreement

6. ENFORCEMENT : section 19 (1) Lagos Multi-Door Court House Law

MULTI DOOR COURT HOUSE

- ❖ Historical background

1. The first multi door house in Nigeria- LMDCH was established in Lagos in 2002
2. Being a public-private partnership project between the High Coutrt of lagos State and Non-profit Organisation, the Negotiation and Conflict management Group (THE NCMG)

KNOW THE OBJECTIVE OF THE MDCH UNDER S. 1 OF LMDCH 2007

3. Legal backing was provided through enactment LMDCHL 2007.
4. Several jurisdictions have replicated the idea. Thus for example there is now the Abuja Multi-door court house.
5. Independent, non-profit corporate body, structured organization.
6. They are court connected, although nothing stops parties approaching the MDCH of their own volition.

7. Independent non-profit corporate body with perpetual succession.
8. Overriding objectives:

OBJECTIVES

-
- To minimize the frustration on the part of citizens by preventing delays and providing a standard legal framework for fair+ efficient ADR solutions
- Envisaged as a focal point for the promotion of ADR in Lagos State
- Dedicated to the promotion, growth and effective functioning of the justice system through the ADR methods.
- Note the provisions in section 4 (1) & (2) ; Section 19 (1) of the Lagos Law- for the enforcement of any settlement agreement .
- Note that abuja multi court house mediation and arbitration rules do not provide for enforceability.

AIMS PURPOSE FUNCTIONS

The main goal is to facilitate wider use of the ADR methods in resolving legal disputes

To facilities

The ADR and litigation are now seen as different doors to justice available to the litigants, as the ADR is linked to the judicial system, for coordination

ETHICAL MATTERS IN NEGOTIATION

a. Lawyer/client privilege Rule 19 (1)-(3)
b. No direct negotiation/ compromise with a party who is represented by a lawyer.
c. Where a party is not represented don't mislead him; also don't undertake to advise him as the law rule 19 (6).
d. Duty of disclosure of the lawyer's Interest –and such interest may be financial, proprietry business ir persoaln r 17 (1-3) RPC
e. Duty of dedication and devotion of attention energy and expertise rule 14 (1)
f. Keep client informwed of the progress of the negotiation.
g. Advise him as to the BATNA and WATNA
h. Draft the agreement and pensure proper execution thereof
i. Take all steps necessary for the process of making the agreement the court judemmnt
j. If the negotiation is in the
k. Duty to promptly deliver to the client any money paid or property rewceived as a result of the negotitiaiton
l. No threat or false or non existent evidence
m. No unneccsassary threats e.g to get the information obtained out on the social media oe even to the relevant law enforcement agencies
n. No unnecessary misrepresentation information.
o. Duty of re[resentation Rule 16
p. Don't misrepresent fct knowingly to the mediator.
q. Dyty to act with integrity, mediation or any ADR should not be uused purposely to delay eventual litigation; or only to obtain information of the opposite party's case RPC.

OWOLABI 'S PROFESSIONAL ETHICS AND SKILLS NOTES 2016/2017 SESSION

WEEK 17

ARBITRATION

- ❖ It is also a form of Alternative Dispute Resolution.
- ❖ Definition: private judicial determination of a dispute between parties by an independent third party known as an arbitrator. They are person(s) other than a court of competent jurisdiction
- ❖ Arbitrator(s) preside over dispute
- ❖ Award—final decision given at the end of hearing. It must being writing. It is final and binding on the parties.
- ❖ Arbitral tribunal—where proceedings are held. It is based on the decision of the parties, they may decide to chose London, it is a voluntary process and decision.
- ❖ Arbitration is a special type of ADR but it thus possesses some attributes of litigation
- ❖ Informality and voluntariness of process. Parties cannot be forced to submit to the process.

STATUTES GOVERNING ARBITRATION IN NIGERIA—

- Arbitration and Conciliation Act Cap A18 LFN 2004—General application in Nigeria but with restrictive application in Lagos—if the parties decided that ACA will be applicable.
- Lagos State Arbitration Law 2009 (LSAL). See. S. 2: "all arbitrations in Lagos state must be governed by the Lagos Arbitration Law 2009, unless the parties decide to the contrary."

TYPES OF ARBITRATION

1. CUSTOMARY ARBITRATION

- ❖ Based on the traditional customs and norms in our localities.
- Based on oral agreement and proceedings not recorded. Not reduced into writing. Though there may be a high likelihood of bias. No written agreement and no written OLINE V OBODO (1958)
- Not governed by the ACA or LSAL
- Govern by the custom, trade and usages of the parties to the dispute
- Judgment not usually enforceable. See OHIAERI V AKABEZE

❖ **CONDITIONS FO VALIDITY OF CUSTOMARY ARBITRATION**

- Parties must have voluntarily submitted dispute to an arbitrator or to arbitration
- There must be prior between the parties that the arbitral decision will be accepted as final and binding.
- None of the parties must have withdrawn from arbitration mid-way
- The proceedings must have been conducted in accordance with the custom, trade or business of the parties.
- A decision must have been reached in writing/ Award must have been published as final decision
- Award/decisions must have been accepted by the parties at the time it was made.

2. DOMESTIC ARBITRATION

- This arises where the parties to the dispute are resident in the same country.
- The dispute/transaction given rise to dispute, arose in the same country where parties reside and obligations of the parties are also to be performed in the country. It could be turned international based on the agreement of the parties.

3. INSTITUTIONAL ARBITRATION

- This is an Arbitration done by bodies or institutions
- Either private or attached to courts. E.g…..Lagos court of Arbitration, Multi-door court houses in Abuja Lagos Ogun.

4. INTERNATIONAL ARBITRATION

- Parties from different countries
- Dispute of transaction leading to the arbitration arose in different countries

5. AD-HOC ARBITRATION:

Not done by institution or bodies. Parties to the arbitration are required to select arbitrators and make rules and laws to govern their proceedings. They set up laws for guiding the arbitration. They mainly makes reference to laws to govern the arbitration. ACA and LSAL

MATTERS THAT CAN BE SETTLED BY ARBITRATION

1. Contract
2. Commercial dispute
3. Land matters

4. Compensation on acquisition.
5. Tortious liabilities
6. Administration of Estate
7. Matrimonial causes

MATTERS THAT CANNOT BE SETTLED BY ARBITRATION

1. Enforcement of fundamental human right
2. Criminal matters
3. Election petition
4. Divorce
5. Interpretation of the constitution or statutes
6. Dispute arising from illegal and immoral transactions
7. Declaratory injunctions
8. Illegality, fraud or immoral matters.

HOW TO RESORT TO USE OF ARBITRATION PROCESS:

Ab initio there must be an agreement between the parties to resort to arbitration.

1. By inserting arbitral clause in their agreement to resolve disputes by arbitration.
2. By making an independent arbitration agreement.

- Arbitration agreement must be in writing and not oral. S. 3 LSAL

❖ Arbitration clause in a contract agreement, it must be independent of the agreement. It is treated as such. The arbitration clause is independent of the agreement and will stand even if the contract agreement fails. See s. 12(2) ACA, s. 19(2) LSAL

REVOCATION OF A LAWFUL ARBITRATION AGREEMENT

❖ Cannot be revoked except by the express or written agreement of the parties or leave of court. S. 2 ACA, s. 4 & 5 LSAL

3. Statutory Arbitration Clause

❖ Arbitration clause included in the statutes creating some bodies or institutions.e.fg. section 6 NIPC ACT.

4. Post dispute Agreement/submission agreement:

❖ Where the parties did not execute arbitration agrrement before a dispute arises but execute one after dispute has arisen. Where the parties execute arbitration agreement after dispute has arisen

❖ Not advisable because of practicability.

5. Court referral:

❖ Court can refer matters to Arbitration after matters are commenced before it.

❖ Can be done suo motu by the court or on application by either party.

Order 3 rule 11 Lagos order 17 rule 1 Abuja.

<u>POWER OF COURT TO STAY PROCEEDINGS</u>

❖ Agreement of the parties to resort to use of arbitration is a bar to them commencing an action without first using arbitration. See SCOTT V AVERY (1856)

❖ Where action is commenced in court instead of arbitration, the other party can ask for a stay of proceedings.

❖ When to apply for stay proceedings: further steps without resorting or filing stay is a wave of the right to stay. See s. 5(1) & 2 ACA; s. 6(2) LSAL; CARLENE (NIG) LTD V UNIVERSITY OF JOS (1994)

❖ The application is by Motion on notice supported by Affidavit and written address attaching the arbitration of agreement.

❖ Application for stay of proceeding must be timeously, immediately after entering appearing appearance before filing pleadings.

COMPOSITION OF ARBITRAL TRIBUNALS

- To give a valid decision a tribunal must be validly constituted
- Determining the number of arbitrators. S. 6 ACA—the parties determine at the absence of which the statute will apply.
- The minimum is one arbitrator. The parties can agree on more than one. But where the parties in ad idem, the number will be three.

APPOINTMENT OF ARBITRATORS:

a. By parties

- ❖ Where one arbitrators is required, parties to jointly agree on who to appoint.
- ❖ **Where 3 arbitrators are required, each party shall appoint one arbitrator each and the 2 appointed shall jointly appoint the 3rd arbitrator. S. 7 (2) ACA**
- ❖ **Parties** can appoint holders of specific professional office e.g. the head of the Nigerian Geographers association.

b. By the Court

- ❖ Where a party fails to appoint an arbitrator within 30 days of request from the other party.
- ❖ If the 2 arbitrators appointed by the parties fail to agree on the 3rd arbitrator within 30 days of their appointment.
- ❖ Where one arbitrator is required and the parties fail to agree on who to appoint. They can by Application to court, made by any of the parties. S. 7(2) ACA

c. By the Arbitrator already Appointed

- ❖ Where 3 are required, the 2 arbitrators already appointed by the parties will appoint the 3rd arbitrator. S. 7(2)(a) ACA.

d. By Holder or specific professional office or an institution

- ❖ An Arbitration agreement may specifically name a 3rd party or an institution as the person to appoint the arbitrator. E.g. by the president of NBA.
- ❖ **Appointment of an Umpires**
- ❖ Where there is a disagreement between 2 arbitrators who cannot reach a decision a 3rd arbitrator may be appointed known as Umpire. Give a unilateral or sole decision which is binding. This is however not provided for under the ACA. Provided for under LSAL see section 9 (1) & (2) LSAL.
- ❖ Where the parties are conflicting, under the LSAL the umpire can give a sole decision that will be binding on the parties.

CHALLENGE OF AN ARBITRATOR

- Duty to disclose his circumstances that may give rise to any doubt as to his impartiality or independence.
- Duty to disclose shall continue throughout the arbitral proceedings till the conclusion S. 8(1) & (2) ACA, section 10 (3) (a)-(d) LSAL.

Grounds for challenging an Arbitration. See s. 8(3) ACA; s. 10(3)(a)-(d) LSAL

- o He is physically or mentally unfit to conduct the proceedings.
- o Circumstances giving rise to the doubt of his impartiality or Likelihood of bias
- o If he is not professionally qualified.
- o Arbitrator have refuse to use all reasonable dispatch to conduct the proceedings or make an word and substantial injustice will be done to the parties

- Parties can decide on the procedure to use to challenge arbitrator; where no procedure agreed upon, the party who wants to challenge shall within 15 days of becoming aware of the inadequacy send a written statement to the tribunal stating good reasons for his challenge. S. 9 (2) & (3) ACA.
- The arbitrator has a duty to listen to the challenge or objection. And so the tribunal can rule on the challenge of jurisdiction. He has power to so do by virtue of Section 9 (3) ACA

TERMINATION OF ARBITRATOR'S MANDATE

- ❖ The mandate given to the arbitrator can be terminated at any time but it has to be by the agreement of the parties. See grounds stated under s. 10(1) ACA and 12(1)(d) LSAL

1. Voluntary withdrawal from office by the arbitrator
2. Agreement of parties to terminate his appointment by reasons of inability to perform
3. If for any other reasons he fails to act without undue delay.

OTHER GROUNDS IN LAGOS

4. Circumstances showing justifiable grounds as to arbitrator impartiality and independence
5. The arbitrator does not possess necessary qualification
6. He is not mentally or physically capable of discharging his duties.

REMOVAL OF AN ARBITRATOR

UNDER THE ACA

- ❖ Where the arbitrator has misconducted himself or
- ❖ Where he has shown that he is bias or unfair.

- ❖ He has gone beyond his jurisdiction.

Any party can apply for removal. S. 30(2) ACA, SCHOFIELD V ALLEN

- ❖ The parties can appoint a Substitute Arbitrator. Where the former had been removed or his appointment terminated. S. 11 ACA; s. 11(4) LSAL

JURISDICTION OF ARBITRAL TRIBUNAL

- ❖ The tribunal has power to give decision on any questions raised regarding it jurisdiction or any objections raised to the validity of an arbitration agreement. S. 12(1) ACA. It is limited to the exact dispute submitted fir determination.

GROUNDS FOR CHALLENGING JURISDICTION OF TRIBUNAL

a. Tribunal does not have jurisdiction to hear the dispute at all.
b. The tribunal has exceeded his scope of authority. S. 12 (3)(a) &(b) ACA
c. That arbitrator does not possess the necessary qualification.

- ❖ Where it is found that the tribunal does not have jurisdiction, the arbitration terminate
- ❖ Where it is found that it has exceeded its jurisdiction, it tend to matters within its jurisdiction and leave the other.

TIME FOR RAISING OBJECTION

a. Ground of total lack of jurisdiction

- ❖ Not later than the time given for submission of his point of defence. S. 12(3) (a) ACA and 19(3) (a) LSAL.

b. Grounds that it has exceeded its authority

- ❖ Must be raised immediately the matter is raised by the tribunal. 12(3) ACA

RULING ON THE OBJECTION

The tribunal has to give a ruling on the matter or the objection. But the tribunal:

- ❖ May treat it as a preliminary issue and give his ruling before going on with the proceedings.
- ❖ May take the objection together with arbitral proceedings and rule on the objection in the final award.
- ❖ The ruling of tribunal is final and binding on the parties s. 12(4) ACA

CONDUCT OF THE ARBITRAL PROCEEDINGS

- ❖ Rules agreed upon by the parties not in conflict with the rules in ACA.
- ❖ Governed by the Arbitration Rules in the first schedule to the ACA
- ❖ Where there is a lacuna, tribunal will conduct proceedings in such a manner as it deems to ensure that parties are given fair hearing.
- ❖ Parties can agree on place for conducting proceedings. But in the absence of such, venue shall be fixed by the tribunal

COMMENCEMENT OF PROCEEDINGS

- Immediately a dispute arises, refereeing to the clause of the agreement, One of the parties will notify the other in writing ("Declaration of Dispute")
- The Arbitral proceedings is deemed to commence on the date the other party receives notice of request to go to arbitration. S. 17 ACA; Art 3(1)(2) AR

CONTENT OF NOTICE OF ARBITRATION—Art. 3(3) AR

a. Stating that the disputes be referred to arbitration
b. Name and addresses of the parties
c. Reference to the arbitration clause in the agreeament of the oarties.
d. Reference to the contract out which the dispute ahas arisen.
e. The natur if th e claim of the party.
f. The reilefs and remedies sought
g. A proposal as to the number of arbitrators to be appointed in the absence of prior agreement as to the number.
h. Reasons given rise to the dispute
i. Need to appoint arbitrators

- ❖ There may be a preliminary meeting called by the arbitrator. To meet the parties and decide the points of claims and defence to be filed.

a. Agree on modalities for conducting the Arbitral Proceedings

- ❖ Parties may agree on language to use. S. 15 ACA
- ❖ Where the parties did not agree, b=the arbitral tribunal can decide the lanhuage.

SUBMISSION OF POINTS OF CLAIM AND DEFENCE

- The claim of the plaintiff is referred to as point of claim. Whule that of the defencdant is the point of defence.
- Claimant to file and serve point of claim on the respondent within time agreed by the parties or within time stipulated by the tribunal
- Content of the point of Claim. S. 19(1) ACA and Ari. 18(2) AR: it contains all the facts relied to prove the defence, the reliefs sought, the documents relied upon, it must be dated and signed.
- Respondent to file point of defence after receipt of point of claim but within time agreed by the parties or as stipulated by the tribunal.
- Content of a point of Defence. S. 19(2) ACA: it contains all the facts relied to prove the defence, the reliefs sought, the documents relied upon, it must be dated and signed.
- Parties can amend or supplement their claim or defence on approval by the tribunal, however, a claimant and defendant cannot amend their points to go outside the scope of arbitration or bring new issues to arbitral agreement. Section 19 (3) ACA , Article 20 AR

HEARING OF PROCEEDINGS

- Conducted in private. Art. 25(4) AR
- Each part is given equal opportunity to present their case.
- Parties present their witnesses and documentary evidence. S. 20(1) ACA
- Document and evidence of one party shall be served on the other party and the arbitrator.
- Arbitrators may apply rules of evidence under the Evidence Act. E.g Oaths & affirmation 20(5) ACA; issue Subpoena to compel witnesses to come to court; order writ of habeas corpus. 20(5) & 23 ACA they can rule on the admissibility of document. ……not invalid on non strict compliance with … Evidence Act
- The parties may agree on procedure to be followed in hearing evidence in the absence of agreement.
- A parties may present their case personally or through legal practitioner or a 3rd party who is knowledgeable in the arear of subject matter in dispute.
- Address by LP after hearing.
- Where claimant fails to state or file his claim within time given tribunal shall terminate proceedings unless respondent intends to present claim. Article 41 (1) (a) LSAL
- Failure of any parties to attend hearing—tribunal shall continue hearing and give awards thereafter.
- Claimants fails to state or file his claim within time given—tribunal shall terminate proceedings unless respondent intends to present acclaim. Art 41(1)(a) LSAL
- Where the defendant does not file a point of defence, the tribunal shall continue the proceedings base unless he show good cause for default. S. 21 ACA and Art 28 AR. It is not a conclusive prove that the defendant admit the claimant's claim
- After address, tribunal fixes a date from award but can recall parties to re-open hearing in exceptional circumstances. Art 20(2) AR

MAKING OF AWARD

- After hearing, tribunal gives its decision. i.e. written Award
- Decision of the tribunal shall be in the majority. S. 24 ACA
- The Determines the right of parties with finality.
- Content of written award. S. 26(1)—(3) ACA:
- Copy of award to be given to each party
- Thereafter proceedings is deemed terminated/closed. S. 27(1) ACA

TERMINATION OF AN ARBITRAL section 27 (2) ACA

- Termination of the Arbitral proceedings can be before the award is given

Instances:

- Where the claimant withdraws his claim
- Where the parties have both agreed to terminate
- Where the tribunal feels it to necessary to continue the proceedings.

APPLICATION TO SET ASIDE ARBITRAL AWARD

- Application by aggrieved party to the High Court within 3 months from the date of award

- The application is by Originating Summons or Originating Motion. supported by affidavit together with:
- CTC of Awards
- Copy of the Arbitration Agreement
- Copy of contract in respect of which was conducted.

GROUNDS

a. That the Award has been improperly procured by any of the parties
b. That the Arbitrator has misconducted himself
c. The arbitrator has gone beyond or contains outside the scope subkited to the arbitration
d. See. 29(2) & 30(1) ACA—SALIBA V LABABEDI
e. Further grounds—s. 55(2) LSAL:

1. A party to the agreement is suffering from an incapacity either insanity or minority
2. That the arbitration is not valid under the Nigerian law which the parties have chose to govern them
3. That the tribunal is not properly constituted
4. That the arbitrator has received improper payment or benefit. Simpliciter bribe
5. That the arbitrator is not qualified as agreed by the parties.

PROCEDURE: it is not clearly provided by the law:

- The application is by Originating Summons or Originating Motion. supported by affidavit together with:
- CTC of Awards
- Copy of the Arbitration Agreement
- Copy of contract agreement in respect of which the arbitration was conducted

ENFORCEMENT OF AWARD PROCURED IN NIGERIA

- Legally binding on the parties and enforceable in court because it is a final decision.

PROCEDURE:

- The party Application to High Court by way of Original Summons or Originating Motion supported by affidavit.
- Accompany by

a. Duly authenticated original copy or CTC of the Award
b. Original copy of the Arbitration Agreement or CTC s. 31(2) ACA
c. Where award not made in English, a translation in English. S. 56(2)© LSAL
d. Upon application, award can be enforced in same manner as a court judgment or order. 31(3) ACA. In whatever manner the judgement of the court can be enforced.
e. The court can refuse to make an order of enforcement an award on application by either parties. S. 35(1) & 57 (2) LSAL

GROUNDS FOR REFUSAL:

Outside scope
Partial and Independence

CONCILIATION

This a third party neutral (conciliator) is appointed the case of the parties after listening to the parties gives an opinion in the mater. He may suggest. Conciliation is similar to mediation. It is interventionist in approach. He may deliver his opinion as to the merits if the case. Parties can shoes to settle their disputes between them by conciliation. Section 37 ACA.

The law governing Conciliation: Arbitration and Conciliation Act (Part 2) Cap A18 LFN 2004

- Another ADR mechanism. Used interchangeably with mediation
- A third party neutral under obligation to try and resolve dispute between the party.
- Under mediation, the mediator move that parties away from their stand and encourages settlement.
- Initiating conciliation by the agreement of the parties.
- A party who wishes to initiate conciliation shall send to the other party a written request to conciliate.
- The request shall be contain a brief statement settin g out the subeject matter of the dispute 38 ACA.
- Conciliation proceedings shall be deemed to have commenced. After the request have been served.

APPOINTMENT OF THE CONCILIATOR:

- They are appointed by the parties upon agreement

- They consist of 1 or 3. Conciliators.
- Where the parties agree on using 1 conciliator, then both parties agree on the joitly appointing the third conciliator.
- HEARING OF PROCEEDINGS AND TERMS:
- Parties may appear in person or by their legal practitioners.
- Cocnicliatro shall examine the case of the parties and hear their evidence
- Cocnciliatro shall shubmti terms of settelemnt to the parties.

Where the parties accept the terms of settlement it becomes binding on them

But if they disagree they can either submit to arbitration or go to the court. 42 (3) ACA.

- An agreement given by the conciliator does not bound the party
- The term of settlement is not binding on the parties.
- Nothing done by the parties in Conciliation proceedings shall after their legal rights in arbitrator or court action. Section 42 (4) ACA.
- If the party agreed to the terms and the term of settlement is executed by the conciliators and the parties. The conciliation is finally determined and be binding on the parties and is enforceable by the party
- Where party disagree to the TOS, parties can decide to go ahead and use Arbitration or go to court. The action in court or Arbitartion proceedings will not be prejudiced by the initial conciliation made.
- Conciliation has statutory backing under PART 2 of the ACA unlikemediation that have not statutory flavor.

OWOLABI 'S PROFESSIONAL ETHICS AND SKILLS NOTES 2016/2017 SESSION

WEEK 20

REMUNERATION OF LEGAL PRACTITIONERS

- A Legal Practitioner ought to be compensated for the work done like other professionals.
- Note that in pro bono legal service, a Legal Practitioner might not be paid.
- The amount to be charged is determined by the nature of the service rendered
- A Legal Practitioner should not charge an excessive fee or a ridiculous amount.

NB: where the legal practitioner charges ridiculous amount, he can be sued by the LEGAL PRACTITIONERS REMUNERATION COMMITTEE (LPRC)

FACTORS TO CONSIDER BEFORE CHARGING A CLIENT

1. Nature of the services rendered
2. Relationship between the client and the Legal Practitioner
3. Statutory provisions
4. Risk involved in the work
5. The client's background or financial strength see rule 52 RPC

TYPES OF FEES

1. **CONTINGENT FEES:** it is called success based fees. Usually, the client postpones payment of the fee to the end of the transaction depending on the success of the case. it also known as a conditional fee.

- Note that the conditions must not be against public policy and not something that cannot be achieved.
- It is not applicable to criminal matters. The client should not be assured of the success of the case and also monetary compensation is not given in criminal matters.
- Contingent fees is used in debt recovery cases and conveyancing matters.
- The LP and the client must agree as to the mode of payment before commencing the work. See Rule 50 RPC.

QUERY: Point of determining fees with the CLIENT? It is determined before the interview stage.

QUERY: is an agreement to share the proceeds of a litigation fee a contingent claim?

No, a lawyer is not allowed to share the proceeds of a claim with the client. Contingent is on success of the matter not the proceeds.

INSTANCES NOT ALLOWED

1. Criminal matters
2. Contrary to public policy
3. Matters vitiated by fraud
4. Matters vitiated by undue influence
5. Involuntariness.

QUERY: is contingent fees taxable? Yes because it is a source of income to the lawyer.

When will the tax accrue? It accrues upon payment of the money to the lawyers

DISADVANTAGES

1. The client might run away with the money
2. The client might disengage the Legal Practitioner in the middle of the case.

RETAINER

- Note that it is called a retainer agreement not retainer ship

General Retainer: the LP is given the ambit to give general legal services to the Client in the retainer agreement. The lawyer can do everything under the instructions given.

Special Retainer: it is a form retainer that the lawyer is given a special instruction to render legal service to a restricted aspect of the clients undertaking.

NB: note that retainer agreement is a mutual arrangement not a tripartite arrangement. Hence kindly note that instances of likelihood conflict of interest in Exam. Conflict of Interest is between the Client and the LP not with a third party.

Mr A, B and C have retained the services of Mrs. Hammed as their solicitor. As a new wig, write a letter to Dr. hammed stating:

1. The best mode of charging the 3 friends and why?

XYZ SOLCITORS

2, NLS RD, VICTORIA ISLAND, LAGOS.

OWOLABI 'S PROFESSIONAL ETHICS AND SKILLS NOTES 2016/2017 SESSION

Our ref: Your Ref:

Date: 5 July 2016.

Dr. Hammed,
ABC Street, NLS Street
Victoria Island,
Dear Madam,

PREFERABLE MODE OF CHARGING LEGAL FEES

In response to the fact stated in your instruction dated 1st of July 2015, kindly find our opinion in respect of the matters as follows:

Issue: mode of charging general retainer agreement?

Generally, the position of the law is that a LP can enter into a retainer agreement with a client. However, the mode of charging the professional fees will depend on the type of the retainer agreement entered into and the nature of the services rendered. The following are the different modes of charging a professional fee:

1. Contingent fee
2. Hourly charge
3. Scale Charge.
4. Consultation fees
5. Percentage fees

From the nature of the facts narrated, it appears that the nature of the relationship between Mr A, B and C and the their Solicitor Mr. Hammed is a general retainer agreement, hence the mode of charging fee is usually by periodic charge but litigations services rendered will not be subject to periodic charge.

Thank you.
Yours faithfully,
FOR XYZ SOLICITORS
M.R.A ISIAQ
Principal Partners.

CORRECTIONS

- The best mode of charging professional fees is using scale charge.

APPEARANCE FEE

Factors to consider:

1. Nature of the matter
2. Status of the LP
3. The location of the court
4. Status of the court
5. Proximity of the court

Appearance fees can be charged separately or lumped together with the professional fee. Normally, appearance fees should be paid before the appearance in the court.

HOURLY FEES

It is applicable in the following transactions:

1. ADR
2. Research
3. Inspection of property

CONSULTATION FEES

PERCENTAGE FEE

The client must be informed before the work is done.

Used in the following transactions:

1. Conveyancing
2. Debt Recovery

FIXED FEE

- Usually applicable to Non-contentious matters.

- Fixed fees are usually non-negotiable in nature
- Fixed fee can be used in the following instances:
- Searches at the CAC
- Searches at he Land Registry etc

TASK BASED BILLING

- Hinged primarily on the nature of the work carried out. It is synonymous with fixed fees.
- **DETERMINATION OF LEGAL PRACTITIONERS CHARGES**
- **The mode of determination of a legal practitioners fee is statutorily based.**
- **The manner in which a legal practitioner**

CONTENTIOUS WORK:

Things to reflect

- Times spent
- Skills and expertise involved
- Labour involved
- Novelty of the case
- Difficulty of issue involved in the case
- Opportunities foregone
- Customary charges of the Bar for similar services
- Amount of money involved
- Benefit accruing to the client in the matter.

NON CONTENTIOUS WORK

1. Drafting of instrument
2. Solicitors work in a general

STATUTES GOVERNING NON CONTENTIOUS WORK

1. LPA
2. LP (Remuneration for Legal Documentation and other Land Matters)Order 1991

- Scale 1: Sale of Land and Mortgages Transactions
- Scale 2: Leases
- Scale 3: other Land Matters

INSTANCES OF CHARGING UNDER SCALE 3

1. Where the parties have agreed in writing to opt out from scale 1 and 2
2. Where the matters is not covered under Scale 1 and 2
3. The matter must be a non-contentious matter

Recovery of Professional Fees—s. 16(1) & (2) LPA.

- A bill of charging is a written document by a LP to the Client containing the principal items of work done and the fees due on the work done.
- Where a bill of charging is not clearly written, it does not vitiate non- payment of the professional fee

Conditions for fees to be recovered

1. Draft a Bill of Charging
2. Serve the Bill of charging
3. Wait for one month from the date of service
4. Bring action for recovery

Essentials of a Bill of Charging

1. Principal items of work done by the LP
2. Signed by the LP
3. Must be served on the client—personally or through substituted means
4. Must be served for a period not less than one month before the commencement of an action in court

Content of a Bill of Charging

1. Subject Matter—Heading—

2. Particulars of the Charging, fees and disbursement
3. Summarized statement of legal work undertaken by the LP
4. Other services rendered by the LP on behalf of the client.

NB: it may be drafted with a covering letter or a covering letter can be subsumed into the letter.

An unsigned Bills of Charges is worthless.

Who can sign a Bill of Charging? A LP or in the name of the Firm.

Commencement or suit for recovery of Bill of Charging

❖ The LP must wait for a period of 1 month from the date of service.

Exceptions

- Must serve a Bill of charges
- The bill must appear proper
- Proof that the client is about to take action to delay or prevent the payment of the professional fee.

QUANTUM MERUIT CASES

❖ It takes place a LP has not been directly brief by the client but he has represented the client and the client has benefited from the representation.

PRO BONO

It can be rendered to the following persons

1. Indigent client
2. Friends and families
3. Clients with long term relationship

TAXATION OF CHARGES

It is the assessment of a bill of charges. It used to ensure that neither the LP nor the client is cheated. It carried out by a TAXING OFFICER (as appointed by the court)

A LP can bring a TAXING OFFICER but the officer must be directed to the court

A certificate is issued after the taxation to know whether the Bill of Charges is appropriate or not. A bill of charges is often taxed when the bill is contentious.

PROCESS OF TAXATION

1. Draft a Bill of charged
2. Sign the Bill of charges
3. Deliver the Bill to the client
4. Make an application that the Bill be Taxed

NB: Can a client apply for taxation as of right? Taxation application must be made within the be 1 month duration before commencement of action for recovery. S. 17(1) LPA. However, a client may apply for taxation out of time via a MOTION ON NOTICE supported by a VERIFYING AFFIDAVIT stating reason for the delay.

❖ The taxing officer may call either of the parties to clarify issues relating to the charge

❖ The officer must ensure free and fair hearing

❖ A certificate is given to state the propriety of the Bill of charges by the Taxing officer

Query: Can a third party apply for taxation? No, the party applying for must have locus. It is between the client and the LP.

NB: the person that make a taxation will bear the cost of taxation. However, the court can order reimbursement of the applicant on the defaulting party.

NB: you cannot commence recovery process by issuing out a demand letter. It may be sent after the Bills of charges but it is not the originating process.

ACCOUNT AND RECORD BOOK

❖ An individual, you are to have:

a. Personal Account
b. Capital Account
c. Out of pocket expenses.

❖ A law firm is to keep a savings or current account of the following 3 types of account:

a. Client Account: it may be a general account for all the clients or separate for each client.

b. Trust Bank Account: used when acting as solicitor trustee, executors or guardians.
c. Personal Account, individual or partnership Account: the personal of the law affirm.

NB: client money may go to trust account. What to consider is the capacity in which the LP is

CIRCUMSTANCES IN WHICH MONEY CAN BE WITHDRAWN FROM THE CLIENT ACCOUNT

LEGAL PRACTITIONERS ACCOUNT RULE

❖ It provides that books of account must keep book of account

Importance of book keeping

1. Helps to plan business strategy
2. Hel to know debtors and creditors at a glance
3. To assess success rate, assess the value of practice at any given time.
4. It help a financial status of the firm in partnership
5. Helps in easy assessment of tax liability
6. Helps in budgeting and planning
7. It enhances business efficacy
8. It helps the LP to distinguish between personal money and client money.

SOURCES OF CLIENT'S MONEY

1. Conveyancing
2. Investment management
3. Fees on account
4. Executorship and Trust
5. Agency work.

Definition of a Client? Rule 2 of LP Account Rules.

These shall include any person on whose account a legal practitioner holds or receives client money.

❖ The basic test to determine who owns the money is to ask if the money belongs to the firm
❖ CLIENTS money includes:

a. This is Money held or received by a legal practitioner on account of a person for whom he is acting in relation to the holding or receipt of such money ether as a legal practitioner… in advance or generally on account of cost but not money received specifically in payment of a Bill or agreed fee.

CLASS WORK

Solicitor delivered a Bill to his client A& CO Ltd. It contains an items of professional charges of 50, 000. The clients send a cheque of 50,000 to the solicitor. Who have the money? Who is owner of the money? It belongs to the office

LP ACCOUNT RULES

❖ It is divided into five parts:

a. Interpretation
b. Client Account
c. Trust Account
d. Inspection and Enforcement.
e. Exemption and schedule

CLASS WORK

Chief O, a client send a cheque made up of 15,000 made of the LP professional charges and 50,000 for completion of contract of sal. Where to be paid? Clients Account

EXEMPTION TO PAYING INTO CLIENT ACCOUNT

1. Where the client instruct that the money not be paid into the client account
2. where a solicitor has spent personal money to be reimbursed the client
3. Used in satisfaction of professional fees
4. Joint money
5. Money used to open the client.

PURPOSES FOR USE OF CLIENT MONEY

1. To make payment

2. To reimburse a LP for disbursement
3. To carry out client's instruction
4. To pay the solicitor's cost.

WITHDRAWAL OF CLIENT MONEY—Rule 8

INSPECTION AND ENFORCEMENT

- ❖ It is the General council of the Bar charged with inspection
- ❖ The GCB can do it in its own motion upon a written application/request by the NBA or on a request of a third party.
- ❖ The legal practitioner will produce the books and such

BOOKS OF ACCOUNT

MR Jude Okon a quantity Surveyor has approached you a legal practitioner to draft his will, draft the bill of charges to be served appropriately.

Comment on the procedure for

a. Taxation;
b. Recovery of the legal practitioner's fee

The solicitor must keep the following books of account

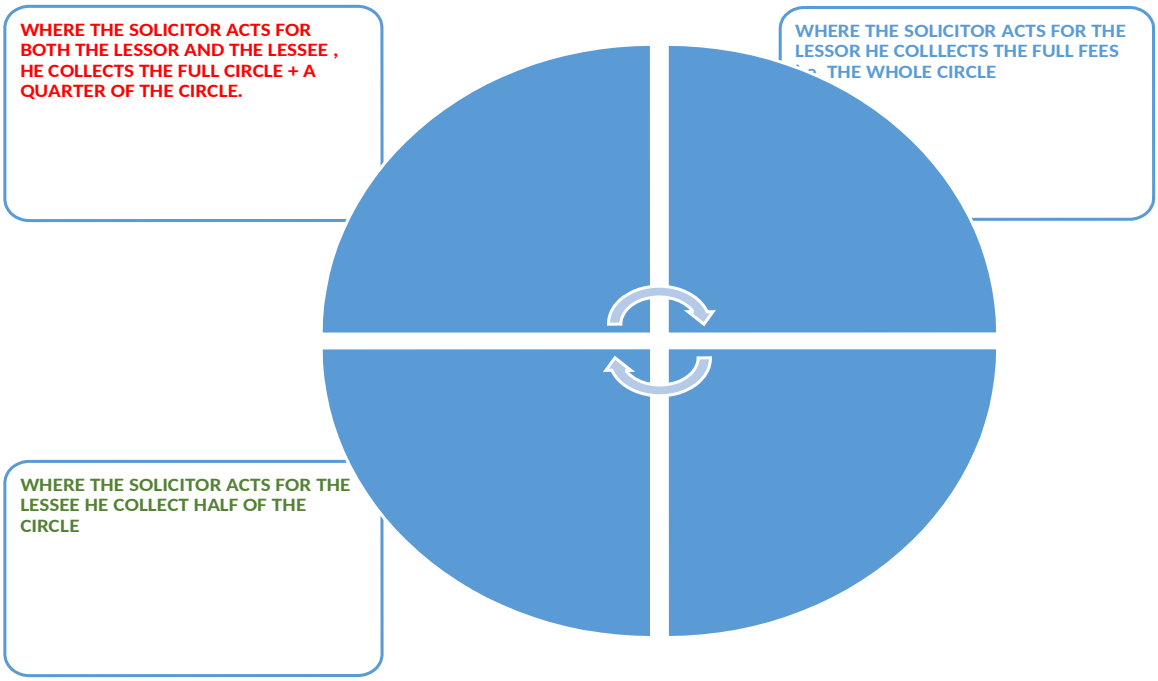
1. Cash Book: it is the temporal form of record keeping while ledger is the permanent from of record keeping. It contains daily entries. The formula for this debiting the receiver and credit the giver. Every income is debited while very expenditure is credit.
2. Ledger: it is a permanent form of record keeping. E.g. Fatimah's Ledger 30/9/2016
3. Journal: this is like a diary. It is temporal in nature. A legal practitioner is not mandated to keep a JOURNAL.

DIFFERENCE BETWEEN CASH BOOK AND LEDGER

The formulae is: **Cash Book is the opposite of common sense while ledger is equal to common sense.** Cash book: All receipt are debited while expenditures are credited. Ledger: all expenditures are debited while all receipts are credited.

FATIMAH'S CASH BOOK. 30/9/2016

S/NS/NO	DATE	PARTICULARS	Debit (#)	Credit (#)
	1-9-2016	Capital	28,000	
	2-9-2016	Rent		2,400
	3-9-2016	Office furniture		1,500
	3-9-2016	Electric typewriter		5,000
				800
				5000
				1,000
				12,000
				1,500
				3,000
		Balance c/d	4,200	
		Balance b/d		32, 200



CLASSWORK

Mr John Dada was called to the Nigerian Bar after three attempts in 1999. On the 9th day of January 2000, Mr Dada 's villagers contributed the sum of N100, 000 and gave him for the establishment of his law firm, his Fiance Susan gave him N500, 000 to seal her love for him and Mr Dada withdraw N500, 000 from his Zenith Bank account all on the same day. On the 10th of February 2000, Mr John rented a one room apartment for his law office at the rate of N30, 000 per annum. He paid for two years. On the 13th of March 2000, Mr John Bought a pair of Italian Suit, Table and chair, refrigerator and Law reports at N 100, 000 , N100, 000, N40,000 and N300,000 respectively. On the 16th of May 2000, Mr John bought an office printer and a laptop at N50, 000 and N 150, 000 respectively. He also gave his secretary Chinaza the sum of N 20,000 as out of pocket expenses for the office.

Draw up Mr. Johns Cash book

JOHN DADA (LEGAL PRACTITIONERS) CASH BOOK. 16th May, 2000

	DATE	PARTICULARS	Debit (#)	Credit (#)
	9/1/2000	Capital (Village contribution)	100,000	
	9/1/2000	Capital (Withdrawal from his personal account)	500, 000	
	9/1/2000	Capital (Gift from Susan)	500, 000	
	10/2/2000	Rent		60,000
	13/3/2000	Italian suit		100,000
	13/3/2000	Table and chair		100,000
	13/3/2000	Refrigerator		40, 000
	13/3/2000	Law Reports		300, 000
	16/3/2000	Office printer		50,000
	16/3/2000	Laptop		150,000
	16/3/2000	Out of pocket expenses		20, 000
	16/3/2000	Balance c/d		280,000
	16/3/2000	Balance b/d	**1,100, 000**	**1,100,000**

SCENARIO TWO

Mr Bond a legal practitioner borrowed 2 million Naira from Diamond Bank to start his law firm of the first January 2017. He bought a Mac Book, two pairs of shoes, two wristwatches, an iphone and a refrigerator at N200, 000, N50,000, N100, 000, N200,000, N50, 000. He rented an apartment at the rate of N50, 000. He bought his LFN at the rate of N250, 000 , all the transactions were on 10th Feb 2017.

He gave his girlfriend Queeneth at the sum of 50, 000 for office upkeep. He brought a printer and a flat screen television for 30, 000 and 70,000 respectively. On the 10th of March his parent gave him N100, 000 to support his law firm. Draw up or complete Mr Bond's Cash Book.

LEDGER

FATIMAH'S LEDGER 30/9/2000

CAPITAL ACCOUNT

S/N	DATE	PARTICULARS	Debit (#)	Credit (#)

OWOLABI 'S PROFESSIONAL ETHICS AND SKILLS NOTES 2016/2017 SESSION

REVISION CLASS 28/07/2017

PROFESSIONAL ETHICS IS AS IMPORTANT AS ANY OTHER COURSE.

DEALING WITH THE CLIENT'S MONEY

The lawyer should render proper account and pay any money received on account to the client's account on the same day save he shows exceptional circumstances.

1. authority of the client
2. mistakenly paid into the account
3. he uses his money to open the account
4. if he has the instruction to use the money for a specific immediate instruction

CAB RANK RULE

It applies only to litigation or advocacy or court cases. Not to property or solicitor's job. But there are exceptions.... If the brief is vexatious or meant to perjure evidence he can withdraw or refuse to accept. You must note the case of disclose and continue and disclose and discontinue or bow out, you should know when to. a lawyer must not acquire interest in the property.

WITHDRAWAL but duty of confidentiality continues and you must give the client adequate and sufficient time

When the case is frivolous

When the course is illegal

When the client refuses to pay

CONFIDENTIALITY

1. when the law permits
2. clients permit
3. by court order
4. notorious facts
5. recovery of professional fees
6. in the course of defending himself
7. when the disclosure indicates that he intends to is planning to commit an offence

DUTY TO BE DILIGENT AND DEDICATED TO CLIENT'S CASE … SEE UDOFIA V STATE

a. Attending the court
b. Duty of punctuality

DUTY TO REPRESENT THE CLIENT COMPETENTLY

But you may decline and engage other competent lawyers

DUTY TO THE COURT

a. UTMOST RESPECT TO THE COURT

1. He mays choose to apply to the court that the court to disqualify himself from the case by motion on notice and affidavit and written address
2. he may write a petition to the NJC to discipline
3. he may apply to the CJ to remove the judge
4. keep mute and wait till appeal

Please no insult to the judge or trial publicity please. Please do not desecrate the temple of justice.

b. RESPECT OTHER LAWYERS IN THE COURT

No fight or struggle.

c. CHANGE OF COUNSEL IN LITIGATION NOT SOLICITOR SHIP

1. He must get in touch or give notice to the the previous lawyers
2. He must ensure that other lawyer's fees are paid. In Lagos it's by motion on notice affidavit and written address while in Abuja it's by a mere application may be letter. Until notice is given to the court in Abuja the court still presumes that the case is still with the former lawyer.
3. the both lawyers must notify the court it is called application for change of counsel
4. The other counsel or former counsel is that hand over the document s to the latter or property.
5. The lawyer also has a right of lien. (the lienor and the lienee) Rule 29(3)(b)

   Note: recovery … is in the high court within the jurisdiction

OWOLABI 'S PROFESSIONAL ETHICS AND SKILLS NOTES 2016/2017 SESSION

Note that all agreements should be in writing

DUTY TO THE STATE

You should seek the protection of the court when any altercation situation occurs

REGULATORY AUTHORITIES

BODY OF BENCHERS:

They prescribe call to bar fees,

They call aspirants to the bar

They discipline legal practitioners… the LPDC

They sponsor aspirants to the bar

LEGAL PRACTITIONERS DISCIPLINARY COMMITTEE

LEGAL PRACTITIONERS PRIVILEGES COMMITTEE: conferring rank of SAN and Discipline of SAN

COUNCIL OF LEGAL EDUCATION:

a. Formal education of aspirants to the bar
b. Continuing legal education
c. Incidental powers: prescribe the Portfolio assessment, prescribe the fit and proper,

CONDITIONS AN ASPIRANT MUST MEET BEFORE BEING CALLED

a. dine three times
b. success at the bar final exams completion of bar programme
c. must be fit and proper
d. must have passed portfolio assessment
e. must be a citizen of Nigeria but abolished since 1992

GENERAL COUNCIL OF THE BAR: makes RPC, ensuring that the core values of the professional

LPDC: NBA, SUPREME COURT AND CJN

a. infamous conduct
b. conviction for an offence
c. conducts incompatible with the status of legal practitioners
d. obtaining enrolment by fraud

PROCEDURE

a. written complaint to the following people
b. the complaint would be forwarded to the NBA for investigation
c. the result or charge and document to the secretary of BOB
d. forwarded to LPDC for hearing
e. rehearing can be made by an application within thirty days

LADEJOBI V

NBA V AKINTOKUN (2015) :in july 23 2014 in LADEJOBI V LPDC .. appeal goes to the appeal committee of the Body of Benchers … LPDC

Note the use of forms 48 and 49

Contempt means an act that brings the court to disrepute …

Note in facie curie and ex facie curie

DISCIPLINE AND APPOINTMENT OF JUDICIAL OFFICERS

WHEN A NON LAWYER APPEARS FOR HIMSELF: HE CAN NOT CITE LEGAL AUTHORITIES, HE CANNOT SIGN MOTIONS, HE CANNOT SIT IN THE BAR

RESTRICTIONS: MUST BE EMPLOYED AS A LEGAL PRACTITIONER, IT MUST BE A GOVERNMENT DEPARTMENT

SHAREHOLDERS, NO EXECUTIVE DIRECTOR

a. company
b. partnership with non lawyers
c. encourage the unauthorised practice of laws

OWOLABI 'S PROFESSIONAL ETHICS AND SKILLS NOTES 2016/2017 SESSION

the role of the judge see Sunday Okoduwa v state
do not charge illegally or excessively
he must be represented in a criminal case
LEGISLATIVE DRAFTING
PRELIMINARY PART:
PRINCIPAL PARTS
MISCELLANEOUS PARTS
FINAL PART/CONCLUDING PARTS
LONG TITLE MUST BE IN UPPER CASE,
ENACTING FORMULA
PLEASE NOTE ADR