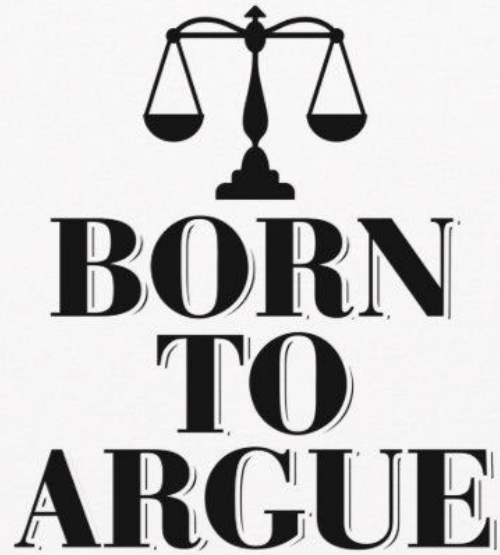


**AGREED  
DOCUMENTS  
STATEMENT OF  
FACTS  
STATEMENT OF  
ISSUES**

Presenter:

**V. GOPAUL**



# ADVERSARIAL VS AGREEMENT

- Litigation is adversarial
- However, rare that every pleaded fact or issue or document is disputed
- There is, therefore, usually room for agreement in that adversarial space
- Obviously, there can be no agreement in respect of disputed facts, issues or documents



# BENEFITS OF AGREEMENT



Helps to focus on:

What is in issue

What must be proven

Witnesses required



2. Compliance with duty to the court  
to further the overriding objective:

Saving costs (benefit for the client)

Saving time (judicial time and your time)



# BE STRATEGIC

- Agreement can fill a gap in adversary's case
- Agreement can sustain a case where there is default in filing witness statements - *John Rahael v T&T News Centre Ltd, HCA 39/2005*; *John Bruce Milne v Trinidad Dock & Fishing Services Ltd CV2007-03438*
- Do not agree anything that you are not prepared to concede
- If in doubt, err on the side of caution and do not agree





# CONSEQUENCES OF NON- AGREEMENT



More facts or documents to be  
proven = more witnesses



More time required for  
trial



Increase client's  
exposure to costs



# ORDER OF AGREEMENT

Documents

Facts

Issues



# AGREED DOCUMENTS

## STEP 1

## REVIEW

- ✓ Pleadings
- ✓ List of documents
- ✓ Law – elements of claim/defence





# AGREED DOCUMENTS



## STEP 2

### Identify

- ✓ What is common on each party's pleading, and list of documents (this does not necessarily mean that there must be agreement)
- ✓ What is in dispute
- ✓ What do you want the other party to prove
- ✓ Which witnesses do you want "to force" the other party to bring to trial



# AGREED DOCUMENTS

## TYPES OF AGREEMENT

### 1. Authenticity

Is the document genuine?

Do you need the author of the document to give evidence?

Are the circumstances of the creation of the document in issue {eg probate or fraud or forgery}



### 2. Truth of contents –

Which documents are being relied on for truth of contents and which for the fact that they are made or sent

Is what is stated in the document in dispute on the pleadings?

If not in dispute, is there some strategic reason for not agreeing the contents?

# AGREED DOCUMENTS

## USE/EFFECT

### **Agreed bundle (authenticity only)**

- ✓ maker of document not required
- ✓ can be tendered through another witness – hearsay notice required

### **Agreed bundle (authenticity and truth of contents)**

- ✓ Treated as admissible evidence without a witness to tender it (*John Milne case*)
- ✓ Documents should still be referenced in the witness statement to give context
- ✓ No need to annex document but agreed bundle should be referenced



# STATEMENT OF FACTS

## STEP 1

### REVIEW

- Pleadings
- Agreed Bundle of documents/List of documents
- Law – elements of claim/defence

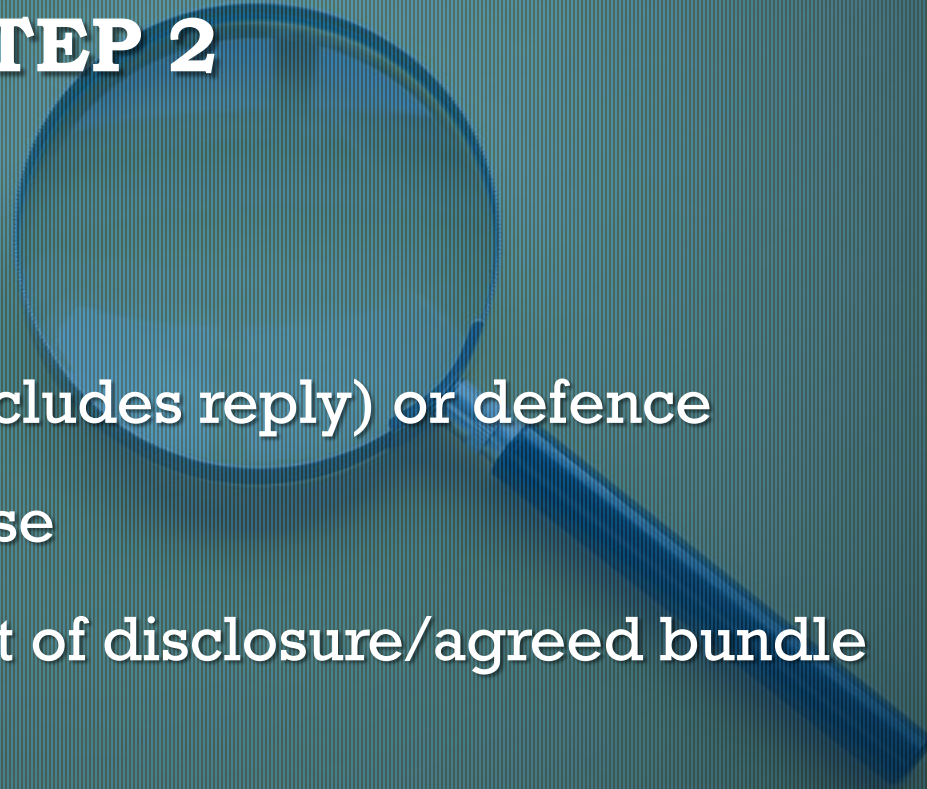


# STATEMENT OF FACTS

## STEP 2

### IDENTIFY

- Relevant facts to prove claim (includes reply) or defence
- What is admitted on pleaded case
- What cannot be disputed in light of disclosure/agreed bundle





# STATEMENT OF FACTS

## COMMON DRAFTING MISTAKES



Focussing only on your  
pleading  
including disputed facts



Arguing case



Long sentences with multiple  
facts – keep it simple

# **STATEMENT OF ISSUES**

## **STEP 1**

### **REVIEW**

- ✓ Pleadings
- ✓ Documents (agreed and unagreed)
- ✓ Caselaw





# STATEMENT OF ISSUES

## STEP 2

### IDENTIFY

- Issues of fact
- Issues of law



# STATEMENT OF ISSUES

## STEP 3

### Define legal issues with reference to

- what must be proven as a matter of law – elements of claim and defence
- The applicable test/s
- The agreed facts
- If an unagreed fact is necessary to formulate the legal issue, introduce the unagreed fact as a hypothetical fact eg if x is the case.....

# STATEMENT OF ISSUES

## COMMON DRAFTING MISTAKES



Including disputed facts in setting out legal issues



Not defining the legal issues with reference to all the elements/ingredients of the claim or defence



Not defining the legal issues with reference to the test set out in the caselaw



Defining issues only with reference to your case and not what the Judge has to direct his/her mind to when determining the case



# AIM



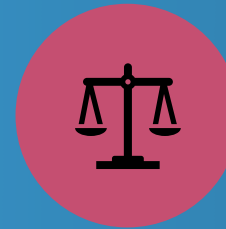
IDENTIFIES WHAT IS  
IN DISPUTE



FOCUS ON WHAT IS  
IMPORTANT



UTILISE YOUR TIME  
AND JUDICIAL TIME  
EFFICIENTLY



IDENTIFY WITNESSES  
TO PROVE DISPUTED  
FACTS AND  
DOCUMENTS



SAVES CLIENT'S  
EXPOSURE TO COSTS