

**SAMLA-UCT Series Of Practical Training Workshops in  
Medico-Legal Practice**

**WORKSHOP 6 – PRE-TRIAL PROCEDURE – CASE MANAGEMENT  
(22 FEB. 2020; 14 MARCH 2020; 18 APRIL 2020)**

**LEARNING OUTCOME STATEMENT**

- a) The aim and objective of the workshop is to provide lawyers, expert witnesses and all others who are attending the workshop with necessary information about pre-trial procedures, more in particular, case flow management, designed to promote justice and to uphold the very purpose of our courts and alternative dispute resolution processes. The course is designed to give those who attend, a brief glimpse at *inter alia* what case management is; why it has been introduced in South Africa; identifying and discussing the fundamental elements of case flow management, from the very first consultation with client, until the case is trial ready; recognizing the role players and how their roles are coordinated; introducing the techniques essential to effective case management; to understand how ethics serve as a driving force behind the beneficial change case management can bring about toward a more efficient justice system.
- b) The training will be relevant to different groups of practitioners that will include: -
- i) Lawyers - how lawyers on the opposing sides of the litigation spectrum should engage with each other during the pre-trial phase of litigation. This includes forging of closer working relationships between them, aimed at speeding up the processing of cases through the system and ultimately, improving the prospects of an efficient trial in the small minority of cases.
  - ii) Expert witnesses – how expert witnesses can engage ethically

and efficiently with attorneys and colleagues to enhance the case flow management process through drafting expert reports compliant in format and value as contemplated by the Rules of Court; how effective participation in arranged joint expert meetings and the production of joint minutes and expert reports can assist in the early resolution of disputes by reducing trial time, alternatively, expediting the flow of civil cases in the High Court, so as to attaining the speedy finalization of cases.

- iii) Mediators – how the proposed Uniform Rule 41A will be used as a dispute resolution mechanism to regulate the procedure for referring disputes for mediation during the pre-trial phase of the case flow management process.
  - iv) Aspirant judges – how case flow management, including case management, affect the judiciary; how judges assume control over caseloads by planning the progress of cases; the courts will also identify the purpose of judicial case control and how their intervention could impact on the case flow management process.
- c) The training will include lectures, interactive discussions on the development of a case management plan. You will also be required to do a group assignment on a litigation case management plan.

### **PROGRAM FOR DAY 1 – 22 FEBRUARY 2020**

07h45 – 08h30. **Registration, refreshments and connectivity.**

08h30 – 08h45. **Opening and Introduction of the Guest Speaker**  
Judge Neels Claassen Non Executive President of SAMLA

08h45 – 09h30 **The impact of case management on the judicial system in South Africa – (Judge Kathy Satchwell)**

(Lecture ± 45 min)

09h30 – 10h15. **Identifying and understanding the roles of those involved in the case flow management process, including the judiciary, lawyers, expert witnesses and court staff** – Henry Lerm  
Course Leader and SAMLA Eastern Cape Chairperson  
(Lecture ± 35 min – Discussion ± 10 min)

10h15 – 10h45 **Refreshment break**

10h45 – 11h25. **Preliminary case assessment phase, including client expectation; whether the firm can meet the expectations; an initial investigation into the merits of the case, i.e. the question of prescription and exclusionary clauses; introducing the roadmap to the different phases in the case flow management process. Introducing the investigative phase i.e. calling for the clinical and hospital records.** – Dr Henry Lerm  
Course Leader and SAMLA Eastern Cape Chairperson.  
(Lecture ± 30 min – Discussion ± 10 min).

11h25–12h10. **The investigative phase. Pursuing the investigation into the merits of the case, including negligence and causation. The role of a Medico – Legal Nurse Consultant in the investigative phase.** – Course Leader Ms Carina van de Wall  
Deputy Faculty Principal and SAMLA Gauteng Chairperson  
(Lecture ± 35 min – Discussion ± 10 min).

12h10 -12h45. **Gathering supportive facts to determine the merits and quantum** – Dr Henry Lerm Course Leader  
(Lecture ± 30 min – Discussion ± 5 min).

12h45 – 13h15. **Explaining the test of medical certainty and the legal test based on the balance of probability. What medical experts should understand when drafting medico-legal reports.**

– Dr Herman Edeling Faculty Principal  
(Lecture ± 25 min – Discussion ± 5 min).

13h15 – 14h10 **Lunch break**

14h10 – 14h15. **Check in and connectivity.**

14h15 – 15h00. **The selection phase. This section of the lecture will identify the need for settlement, promoting mediation as means to resolve the dispute, alternatively, going the litigation route – Adv Ayesha Tiry**

(Lecture ± 30 min – Discussion ± 15 min).

15h00 – 15h15 **Comfort break**

15h15 – 16h00. **Continuation of the selection phase. This part of the lecture directs attention to the litigation phase and more specifically, the drafting of pleadings, including the factors influencing the drafting of the particulars of claim. – Leigh de Souza-Spagnoletti Attorney**

(Lecture ± 30 min – Discussion ± 15 min).

## **PROGRAM FOR DAY 2 - 14 MARCH 2020**

07h45 – 08h30. **Registration, refreshments and connectivity.**

08h30 – 09h00. **Report Back from Judge Neels Claassen and Syndicate Leaders. Introducing the guest speaker**

09h00 – 09h45. **Introducing case management of civil trial cases:  
- An overview of how strong a tool case management can be in bringing about improvements in the justice system. A need for a paradigm shift.**

– Adv Ismail Hussain SC.

(Lecture ± 30 min – discussion ± 15min)

**09h45 – 11h00. Options open to defendant after being sued, including consultations, calling for a peer review, briefing experts, identifying possible defences, calling for settlement, alternatively, filing a plea and counterclaim. – (Wayne Forrester Attorney).**

(Lecture ± 60 min – discussion ± 15min)

**11h00 – 11h15. Refreshment break.**

**11h15 – 11h35 How Expert Witnesses can contribute towards an effective and efficient case management program. – Dr Sharon Munyaka Organisational Psychologist.**

(Lecture ± 15 min – discussion ± 5min)

**11h35 – 12h35. Pre-trial preparations, including filing expert notices and summaries of expert opinion, discovery of documents; making use of advice on evidence; pre-trial consultations with plaintiff, lay witnesses and your experts. –**

Adv John Mullins SC

(Lecture ± 45 min – discussion ± 15min)

**12h35 – 13h00. Continuation of pre-trial preparations, including engaging in the pre-trial conference; drafting the Rule 37 Minute; complying timeously with all undertakings given; paginating and indexing of pleadings and notices; preparing court bundles.**

Adv. Ayesha Tiry

(Lecture ± 25 min. To continue after lunch.

13h00 – 14h00. **Lunch break.**

14h00 – 14h15. **Check in and connectivity.**

14h15 - 14h45 **Continuation of Adv. Ayesha's lecture**  
(Lecture ± 25 min – discussion ± 15min)

14h45 – 15h00. **Comfort break.**

15h00 – 15h45. **Engaging in final settlement talks as part of the case management process, including draft orders.** - Adv. Ayesha Tiry  
(Lecture ± 30 min – discussion ± 15min)

15h45 – 16h30. **Factors influencing the settlement talks, including the establishment of a Trust for the benefit of the claimant; the appointment of a Curator for the claimant; the appointment of a Case Manager to assist the claimant.** - Dr Brad Beira The Advisory Group.  
(Lecture ± 30 min – discussion ± 15min)

### **PROGRAM FOR DAY 3 – 18 APRIL 2020**

07h45 – 08h30. **Registration, refreshments and connectivity.**

08h30 – 09h30. **Report back from the syndicates – Judge Neels Claassen and Syndicate leaders.**  
(Discussion ± 60 min)

09h30 – 10h30 **How Expert Witnesses may promote the case management process by arranging the joint meeting of the**

**experts; drafting joint minute of the meeting. Dr Herman Edeling Faculty Head**

(Lecture ± 45 min – discussion ± 15min)

11h00 – 11h15. **Refreshment break.**

11h15 – 13h00. **Unpacking the role of the important players, including Expert witnesses, in complying with the Practice Directives to promote case management** – Adv. Jenine Khan

(Lecture ± 90 min – discussion ± 15min)

13h00 – 14h00. **Lunch break.**

14h00 – 14h15. **Check in and connectivity.**

14h15 – 15h00. **Developing a case flow management plan.**

**Open Discussion**

(Discussion 45 min)

15h00 – 15h15. **Comfort break.**