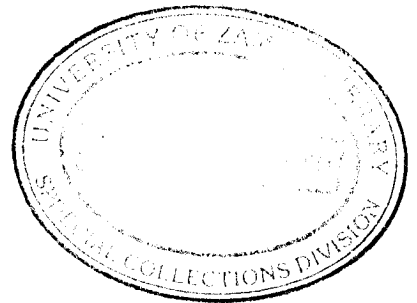


**NEGLIGENCE CLAIMS AGAINST LAWYERS AND INSURANCE COVERAGE IN  
ZAMBIA.**

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**BY**

**MARGRET HAKASENKE**

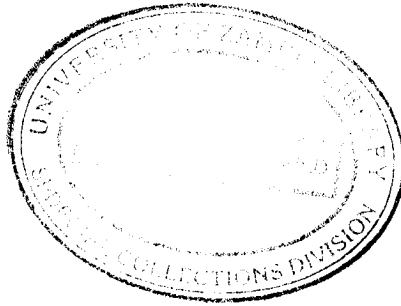


A dissertation submitted to the University of Zambia Law Faculty in partial fulfilment of the requirements for the Award of the Bachelor of Laws (LLB) Degree.

2012

**DECLARATION**

**I MARGRET HAKASENKE COMPUTER NUMBER 28022106** hereby declare that the contents of this directed research are entirely based on my own findings and it has not previously been submitted for a degree at the University of Zambia or any other University. All other works referred to in this essay have been duly acknowledged. I bear absolute responsibility for all errors, defects or any omissions herein.



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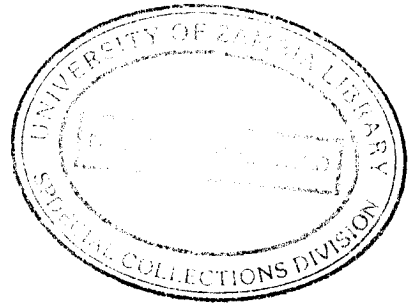
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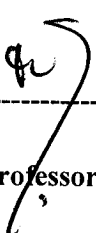
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## **ABSTRACT**

This Essay set out to discover the underlying causes of negligence claims against Zambian lawyers and the extent of insurance coverage. The Essay also looks at the legal framework tasked to deal with such claims as well as the judicial responses to such claims. In so doing, an appreciation of the extent to which such safeguards have operated so far was made. This research was both qualitative and quantitative; as such both primary and secondary sources of data such interviews, books, journals and scholarly materials were employed.

It was brought to the writer's attention that the underlying cause of such claims is failure by the lawyers themselves at the outset to set up a proper relationship with the client, which entails explaining to the client what he is to do and what is expected of the client throughout the engagement. In this regard, it was recommended that continuous professional development (CPD) programmes such as those offered by a company known as Jurispractice should continue to be offered to ensure that Zambian lawyers obtain more skills on how to deal with client interface throughout their years at the bar.

It is opined that the legal framework tasked to deal with the problem of negligence though reasonably effective; more can be done such as inclusion in the laws an express power on the courts to make wasted costs orders against negligent lawyers. The paper also recommends that indemnity policies should be mandatory by inclusion of such an obligation in the Practice Rules, given that lawyers will inevitably be faced with negligence suits at some point in their carrier.

**DEDICATION**

To my parents Esnart Lungu and Michelo Hakasenke, thank you very much for making it possible for me to pursue my degree in Law.

## **ACKNOWLEDGEMENTS**

Before any human being is acknowledged, I would first of all like to give glory to the almighty God for seeing me thus far in life generally and particularly in my journey at the University of Zambia.

The conclusion of this work would not have been possible without the help of a number of people. I first of all thank my supervisor Professor Mvunga for guiding me through this research as well as Mr. Sakala for responding promptly to my questions on email. Special thanks go to my 'special friend' Lloyd Mugode for his love and support; you were there for me emotionally and believed in me even when I felt I discouraged.

I extend my gratitude to my friends: Micheal, Choolwe, Monde, Lukundo, Naomi, Annette and Diana for being there for me in so many ways during my stay at UNZA and when carrying out my research. Lastly, I would like to thank my loving family, especially my sister Ireen for encouraging me and being there for me even when I failed at times, and my dad, for working tirelessly to provide the financial resources needed for my education. To my sister Milimo and brother in law Kelvin, thank you for everything you have done for me, and my God continue blessing you.

## **TABLE OF STATUTES**

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Limited 2011/HPC/ 0665. (unreported)

## GLOSSARY OF ABBREVIATIONS

|     |                               |
|-----|-------------------------------|
| AGM | Annual General Meeting        |
| LAZ | Law Association of Zambia     |
| LPC | Legal Practitioners Committee |

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## CHAPTER ONE

### GENERAL PRINCIPLES OF THE LAW OF NEGLIGENCE

#### 1.0 General Introduction

The legal profession has existed for over two hundred thousand years, from the Greek city-states and the Roman Empire to present day. Legal advocates have played a vital and active role in the formulation and administration of laws. Given their crucial role in society and their close involvement in the administration of law, lawyers are subject to special standards, regulations, and liability, sometimes called legal ethics or professional responsibility. Issues of ethical responsibility and duty are an inherent part of the legal profession. It has been said that a profession's most valuable asset is its collective reputation and the confidence which that inspires. The legal profession especially must have the confidence of the community<sup>1</sup>. This calls for the need to maintaining the highest degree of skill and competence in giving legal services to clients.

In this regard, Macfarlane in his article cites Justice Kirby of the Australian High Court insisting on this crucial need when he noted:

*The challenge before the legal profession....is to resolve the basic paradoxes which it faces....To reorganise itself in such a way as to provide more effective, real and affordable access to legal advice and representation by ordinary citizens. To preserve and where necessary, to defend the best of the old rules requiring honesty, fidelity, loyalty, diligence, competence and dispassion in the*

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<sup>1</sup>McDonald, B, *Ethical Conduct and the Professionals Dilemma: Choosing Between Service and Success*.(New York: Quorum Books, 1991)

*service of clients, above mere self-interest and specifically above commercial self-advantage<sup>2</sup>.*

Suffice to point out at this juncture that when a professional undertakes to offer his services at a fee or at no fee at all, he has the responsibility to give proper services or must exercise a high degree of skill and care required in that particular field of activity<sup>3</sup>. Negligence in the legal profession, which is the concern of this paper, is said to occur when a legal practitioner does not fulfil his duties to a client in a standard manner; it is failure by a legal practitioner to exercise the degree of care and skill that a legal practitioner of the same speciality would use under similar circumstances<sup>4</sup>. Just like the medical profession, the legal profession in Zambia has had numerous claims of professional negligence reported to the Legal Practitioners Committee. It is in light of the foregoing that this dissertation seeks to highlight the underlying causes of negligence claims in the legal profession in Zambia, and suggest ways on how the profession can avoid such risks.

### **1.1 Statement of the Problem**

A lawyer is a member of a professional body whose reputation is linked to each and every one of its members; the need to maintain the highest standards is an on-going obligation for the Bar. Internationally, lawyers in more advanced legal jurisdictions have implemented and

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<sup>2</sup> Peter MacFarlane, "The Importance of Ethics and the Application of Ethical Principles in the Legal Profession," *Journal of South Pacific Law* no. 6 (2002): 388-391.

<sup>3</sup> *Lanphier v. Phipos* [1838] 8 C. & P. p475, per Tindal C.J.

<sup>4</sup> R.A. Percy, *Charlsworth and Percy on Negligence* (London: Sweet and Maxwell, 1990).

<sup>5</sup> Adams Gorlin, *Codes of professional Responsibility* (Washington, D.C.: Bureau of National Affairs, 1994).

adhere to very high standards of client care with regard to confidentiality, duties of disclosure and conflicts of interest<sup>5</sup>.

Zambia’s economy has seen appreciable growth in recent years with an increased presence of multinational companies. By their very nature multinational companies demand a high level of service delivery coupled with insistence on ethics and standards of care prevailing in their countries of origin. Sophisticated users of professional services are very insistent on the enforcement of their rights. These standards in Zambia seem to be going down; this is evidenced by the numerous cases reported to the Legal Practitioners Committee. The Committee in the period 2009-2011 heard about 209 cases varying from professional negligence to misappropriation of client’s funds<sup>6</sup>. There is need to investigate the root cause of such negligence claims with a view to assist lawyers in Zambia to be equipped with the tools to prevent unnecessary but potentially costly legal suits. In addition, it is fundamental for legal practitioners to take up professional indemnity policies given the costly legal suits they face or likely to face.

**1.2 Purpose/Objectives of the Study**

The lawyer client relationship is deemed as a fiduciary one; this entails that the client places himself completely under the lawyer’s control. Most people are under the fallacy that lawyers being knowledgeable in the law do not make mistakes<sup>7</sup>. However, given statistics of cases dealt with by the Legal Practitioners Committee, it is clear that no matter how skilled they are, they sometimes fall short of the standards commensurate with their skill, this subjects

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<sup>6</sup>Law Association of Zambia Annual General Meeting Minutes:Report of the Legal Practitioners Committee, 2011

<sup>7</sup>The City Law School University, Principles Reasons for Complaints against Lawyers: Professional Misconduct (London: Oxford University Press, 2007).



them to negligence claims. This Essay is therefore aimed at making a full inquiry into professional negligence claims against legal practitioners in Zambia, as well as insurance coverage in respect of such claims. The specific objectives of the study will be:

- 1) To find out the underlying causes of negligence claims against legal practitioners in Zambia, if any
- 2) To ascertain how the profession exposes itself to such claims, what has been done about such claims and what can be done to minimise them
- 3) To find out whether legal practitioners take up professional indemnity policies in the light of the rising costs of professional negligence claims.
- 4) To make an assessment of the efficacy of the current legal and administrative framework tasked to deal with the issue under inquiry
- 5) To make a comparative analysis between Zambia and some jurisdictions on the judicial responses to such claims
- 6) To conduct an inquiry on people's attitudes towards litigation and accessibility to the justice system when it comes to cases of professional negligence of lawyers in Zambia.

### **1.3 Significance of the Study**

After a thorough research on related literature on the subject under inquiry, it was brought to the writer's attention that most works on professional negligence in Zambia have focused on the medical profession. This research therefore endeavours to fill this gap by giving a full insight on issues of negligence in the legal profession in Zambia. In addition, the findings of this research will be of practical importance to the public as well as legal practitioners themselves. This is because the research will highlight the weaknesses in service delivery of lawyers that lead to negligence claims, and as such opportunities for reform will be given. The study is also intended to enlighten the general public seeking legal services on their

rights against negligent legal practitioners. Finally, the study is of great importance as it will be done in partial fulfilment of the award of bachelor of degree in law.

#### **1.4 Methodology**

This research will be both quantitative and qualitative, and as such, the study will employ both primary and secondary sources of data. The primary sources will include interviews with legal practitioners, members of the public that deal or have dealt with lawyers as well as officials from the Law Association of Zambia. Additionally, secondary sources of data such as text books, statutes, journals, presentations and other scholarly materials will be resorted to.

#### **1.5 What is negligence?**

Negligence may mean a mental element in tortious liability or any other form of liability; on the other hand, it may connote an independent tort. Suffice to point out that this Essay discusses it in the latter sense. As a tort, negligence is defined as breach of a legal duty to take care which results in damage to the claimant<sup>8</sup>. The term Negligence was also defined by Anderson B in the case of *Blyth v. Birmingham Waterworks*<sup>9</sup> as:

*“The omission to do something which a reasonable man guided upon those considerations which ordinarily regulate the conduct of human affairs would do, or something which a prudent and reasonable man would not do”*

From the above definition of negligence, it can be stated that negligence has four elements which must be proved in order for a claimant to succeed. These include: duty of care, breach of duty, causation, and resultant damage.

It is not for every careless act that a person may be held responsible in law; the claimant must be owed a duty of care by the defendant and such duty should have been breached. The test of breach is objective in that it is left to the judge to decide what, in the circumstances of the

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<sup>8</sup> W.V.H. Winfield & Jolowicz on Tort, 16<sup>th</sup> ed. (London: Sweet & Maxwell, 2002).

<sup>9</sup> [1856] 11 EX 781

particular case, the reasonable man would have in contemplation, and what, accordingly, the party sought to be made liable ought to have foreseen<sup>10</sup>. Duty of care on the other hand, is a legal obligation imposed on an individual requiring that they exercise a reasonable standard of care while performing any acts that could foreseeably harm others<sup>11</sup>. In this regard, the concept of duty of care may be considered as a formalisation of the implicit responsibilities held by an individual towards another individual within society. It determines whether the particular loss suffered by the plaintiff in the particular way in which it occurred, can as a matter of law be actionable.

Central to the existence of a duty of care in the tort of negligence is the notion of reasonable foreseeability of the effects of one's acts on one's neighbour. Thus a person can only recover compensation for loss which in law is not too remote. Based on the ruling in the case of *Re Polemis*<sup>12</sup>, the law was to the effect that if a reasonable man would have foreseen that some damage might result from the wrongful act, then he was liable for all the direct consequences which in fact resulted. But now, since the ruling in *Overseas Tank ship (U.K.) Ltd. V. Morts Dock & Engineering Co Ltd*<sup>13</sup>, the defendant is only liable for damage which is of the same type as or similar type to the damage which could reasonably have been foreseen: he is not liable for damage which is of a different type from that which could reasonably have been foreseen. Put differently, even where there is breach of duty and direct damage occurs, if that damage caused was unforeseeable, then the defendant cannot be held liable.

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<sup>10</sup>Glasgow Corporation v. Muir [1943] AC. 448, per Lord Macmillan at 457.

<sup>11</sup>R.A. Percy, Charlseworth & Percy on Negligence (London: Sweet & Maxwell, 1990), 50.

<sup>12</sup>[1961] AC 388

<sup>13</sup>[1921] 3KB 560, CA.

Finally, plaintiffs must have suffered damage either physical, for example, personal injury or economic, that is pure financial loss arising from the negligent act or omission if they are to have a cause of action against the torfeasor<sup>14</sup>.

**1.6 The Basis of professional negligence**

Professionals belong to an occupational group such as medicine, law engineering, and teaching, which has a special body of knowledge that allows them to perceive things and understand problems of others better. They go through a high and advanced level of intensive training which provides them with a wide array of knowledge and skills enabling them to provide specific services which are obtained from specialised schools. As a consequence of being more highly skilled, professionals are held to a higher standard and are expected to be able to complete tasks related to their training in a competent way. These people take oaths in their professions and need to maintain that level of duty when they perform their professional activities; failure to exercise due caution is considered negligence and clients can sue for damages if they have been injured as a result of negligent care<sup>15</sup>.

**1.7 How Liability Arises**

Professional negligence, is negligence committed by someone who has acquired more skills and training than the average person; it is said to occur when an act or continuing conduct of a professional, which does not meet the standard of professional competence and results in provable damages to his or her client or patient. Such conduct or omission may be through negligence, ignorance (when the professional should have known, or intentional wrong doing), but does not include the exercise of professional judgement even when the results are

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<sup>14</sup>R.A. Percy, Charlseworth & Percy on Negligence, 50.

<sup>15</sup>Pitchfork Edward, Law of Tort,10<sup>th</sup> ed. (London: HLT Publications, 1996)

detrimental to the client or patients<sup>16</sup>. In this connection, Tindal C.J laid down the following rule in the case of *Lanphier v Phipos*<sup>17</sup>

*Every person who enters into a learned profession undertakes to bring to it the exercise of reasonable degree of care and skill; he does not undertake if he is an attorney that at all events you shall gain your case, nor does a surgeon undertake that he will perform a cure, nor does he undertake to use the highest possible skill. There may be persons who have a higher education and greater advantages and competent degree of skill and will not say whether in this case the injury was occasioned by the want of such skill in the defendant. The question is whether this injury must be referred to the want of a proper degree of skill and care in the defendant or not.*

Similar sentiments were expressed by Lord Cottenham *Hart v. Frame*<sup>18</sup>. In that case, certain masters employed an attorney to take proceedings against their apprentices for misconduct. The attorney specifically proceeded on the section of the Statute which related to servants and not to apprentices. It was held that there was such want of skill or diligence as to render the attorney liable to repay to his clients the damages and costs occasioned by his error. Lord Cottenham said:

*“Professional men possessed of a reasonable portion of information and skill according to the duties they undertake to perform and exercising what they so possess with reasonable care and diligence in the affairs of the employers certainly ought not to be held liable for errors in judgment whether in matters of law or discretion. Every case, therefore, ought to depend upon its own peculiar circumstances: and when an injury has been sustained which could not have arisen except from the want of such reasonable skill and diligence or the absence of the employment of either on the part of the attorney the law holds him liable. In*

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<sup>16</sup>William, R. Thomas, *Professional Negligence* (London: Sweet & Maxwell, 1960), 5.

<sup>17</sup>[1838] 8 C.& P.p475

<sup>18</sup>[1964] 6.Cl& F. 193

*undertaking the client's business he under takes for the existence and for the due employment of these qualities and receives the price of them."*

Professionals have a duty of care to their clients as they are relying on their skills and expecting them to exercise reasonable caution. Thus, just like any other negligence claim, for of a duty of care on the part of the professional, and that this duty has been breached. As mentioned above, the standard test of breach in professional negligence claims is whether the defendant has matched the abilities of a reasonable person in the same profession. In addition, if it is clear that the duty of care has been breached then it is also necessary to prove that one's financial loss came about as a direct result of the negligence on the part of the professional. Lastly, only losses that are reasonably foreseeable are recoverable<sup>19</sup>.

## **1.8 Conclusion**

This Chapter gave a general introduction of the entire Essay. A concise definition of what negligence is as well as professional negligence has also been given. The Chapter has further briefly explained the core elements that need to be proved in a professional negligence suit in order for a claimant to be successful.

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<sup>19</sup> Thomas, Professional Negligence, 5.

## CHAPTER TWO

### PRINCIPLES OF NEGLIGENCE IN THE LEGAL PROFESSION

#### **2.0 Introduction**

In Chapter one, the general principles of negligence, the special standards appropriate to professionals as well as how liability arises were discussed. It is therefore the purpose of this Chapter to give a detailed discussion on negligence particularly in the legal profession. In so doing, the definition of a legal practitioner according to the laws of Zambia will be given. The Chapter will also discuss the rights and obligations of a legal practitioner and the client.

#### **2.1 Who is a Legal Practitioner?**

Before we delve into the whole discussion of negligence in the legal profession, it is of paramount importance that a legal practitioner as well as the client is defined. The definition of a legal practitioner is to be found in the Legal Practitioners Act Cap 30 of the laws of Zambia. By section 2 of the said Act, ‘client’ includes “any person who, as a principal or on behalf of another, or as a trustee or personal representative, or in any other capacity, has power, expressed or implied, to retain or employ, and retains or employs a practitioner and any person who is or may be liable to pay to a practitioner any costs.”

‘Practitioner’ means “A person who has been admitted to practice as an advocate under the provisions of this Act and whose name is duly entered on the Roll”. Section 11 of the Act sets out the qualifications for admission as a legal practitioner, the section provides:

*“Subject to the provisions of subsection (1) of section thirteen, a person shall be entitled to be admitted as a practitioner if-*

*A. (a) he has, in consequence of an examination, obtained a degree in law from the University of Zambia or from a university outside the Republic*

*approved by the Council of Legal Education and whose degree in law is recognized by the University of Zambia as academically equivalent to a University of Zambia degree in that subject; and*

*(b) (i) he has for one year attended a course of post-graduate study required by the Council of Legal Education and provided by the Zambia Institute of Advanced Legal Education and has been duly certified as having fulfilled the requirements of such course by the Director of the said Institute; or*

*(ii) he has, alternatively, in lieu of (i) above, after having obtained his degree, completed two years' service in the Republic as an articled clerk under articles of clerkship to a practitioner; and*

*(c) he has passed the Legal Practitioners Qualifying Examination; or*

*B. (a) he is a qualified lawyer (by whatever name called) and thereby has a right of audience before courts exercising original civil or criminal jurisdiction in a self-governing State being, in the opinion of the Council of Legal Education, a State which is, or was at any time, a member State, or was part of a member State, of the Commonwealth of Nations and which applies as its predominant basic system of law the Common Law or a legal system founded upon the Common Law; and*

*(b) (i) (I) as such, he has been a practising lawyer of not less than three years' standing in the State in which he is so entitled to practise; and*

*(II) he has been actively employed for not less than six months in the Republic in the office of a practitioner of the prescribed standing, or in a judicial or legal capacity in a department of Government prescribed by the Minister, or in the*



*department of a Town Clerk who is admitted as a practitioner under this Act, and his said employer, or the public officer in charge of the said department of Government in which he has so served, or under whom he has so worked, as the case may be, has certified his work as being satisfactory; or alternatively, he has for one year attended a course of post-graduate study required by the Council of Legal Education and provided by the Zambia Institute of Advanced Legal Education, and has been duly certified as having fulfilled the requirements of such course by the Director of the said Institute; and*

*(III) he has passed such parts of the Legal Practitioners Qualifying Examination set by the Council of Legal Education as may be specified by the said Council; or*

*(ii) (I) as such, he has been a practising lawyer of not less than three years' standing in the State in which he is so entitled to practise; and the Council of Legal Education, after consultation with the Minister and the Chief Justice, deems his qualifications to be sufficient for the purposes of this section; and*

*(II) he has been actively employed for not less than one year in the Republic in the office of a practitioner of the prescribed standing, or in a judicial or legal capacity in a department of Government prescribed by the Minister, or in the department of a Town Clerk who is admitted as a practitioner under this Act, and his said employer, or the public officer in charge of the department of Government in which he has so served, or the Town Clerk under whom he has so worked, as the case may be, has certified his work as being satisfactory; or alternatively, he has for one year attended a course of post-graduate study required by the Council of Legal Education and provided by the Zambia Institute*

*of Advanced Legal Education, and has been duly certified as having fulfilled the requirements of such course by the Director of the said Institute; and*

*(III) he has passed the Legal Practitioners Qualifying Examination set by the Council of Legal Education<sup>1</sup>.”*

The categories of legal practitioners in order of precedence as set out by section 20 of the Legal Practitioners Act include: the Attorney-General, the Solicitor-General of Zambia, all State Counsel for Zambia, in the order of the dates on which the dignity of State Counsel for Zambia was conferred upon them, and all other practitioners according to the order of entry of their respective names on the Roll<sup>2</sup>.

## **2.2 The Concept of Duty in the Legal Profession**

It is a fundamental principle of law that a legal practitioner owes his client a duty of care to exercise a reasonable degree of skill and knowledge in all legal matters that he undertakes. Just like other professions, a legal practitioner's duty of care to his or her client is said to be concurrent, that is, it falls under both contract and tort. In addition, there is also a fiduciary duty. However, the basis upon which liability in all these circumstances is to be reviewed is the precise ambit and nature of the practitioner's instructions<sup>3</sup>.

The liability of a lawyer in contract arises by virtue of the agreement under which he has been retained to act; a legal practitioner is expected to act within the precincts of the contract with his or her client. The nature of a legal practitioner's duty under contract was succinctly put by Oliver J. in the case of *Midland Bank Trust Co Ltd v Hett, Stubbs & Kemp*<sup>4</sup>, wherein

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<sup>1</sup> The Legal Practitioners Act, Cap 30 of the Laws of Zambia

<sup>2</sup> The Legal Practitioners Act, Chapter 30 of the Laws of Zambia

<sup>3</sup> R.A. Percy, *Charlsworth & Percy on Negligence* (London: Sweet & Maxwell, 1990)

<sup>4</sup> [1979] Ch.D 384

he emphasised that “ a contract gives rise to a complex of rights and duties of which the duty to exercise reasonable care and skill is but one. “A fiduciary duty is a duty owed by a lawyer to a client owing to the confidential relationship that exists between them. This duty imposes on a legal practitioner an obligation neither to abuse nor to take any secret advantage of the special relationship that has been created by their relationship.

Tortious duty of a lawyer to a client need not arise from a contractual relationship; it is one imposed by law as reiterated in the case of *Donoghue v Stevenson*<sup>5</sup>. There has been a lot of controversy as to whether a legal practitioner’s tortious duty extends to a third party. Prior to 1963, the law as stated in cases like *Batten v Wedgwood Iron Co Ltd and Re Dangar’s Trusts*<sup>6</sup> was to the effect that except in cases where a solicitor was liable as an officer of the court, there was generally no duty owed to a non-client. However, after 1963 in the case of *Hedley Byrne & Co. Ltd v Heller & Partners Ltd*<sup>7</sup>, the principle was eroded when a solicitor who upon request gave advice or information negligently, whether gratuitously or not, to a non-client, and had reason to believe that the advice or information would be acted upon, could well be liable in the absence of a disclaimer for loss or damage suffered as a consequence.

Additionally, in the case of *Dutton v Bognor Regis Urban District Council*<sup>8</sup>, it was submitted by Lord Denning that “a professional man who gives guidance to others owes a duty of care, not only to the client who employs him, but also to another who he knows is relying on his skill to save him from harm. The essence of this proposition is that the reliance, that is, that the professional man must know that the other is relying on his skill and the other must in fact

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<sup>5</sup>[1932] A.C 562.

<sup>6</sup>[1886] 3 C.h.d. 346

<sup>7</sup>[1964] A.C 465.

<sup>8</sup>[1972] 1 Q.B.373 at 394 and 395

rely on it.” Further, in the case of *White v Jones*<sup>9</sup>, where a solicitor accepted instructions to prepare a new will but failed to do so and the testator died. It was held that he was liable in negligence to the intended beneficiaries because the solicitor could reasonably foresee that his negligence could result in the loss of the intended legacy.

With regard to the other party to the litigation, the general position of the law is that a lawyer owes no duty to the other party to the litigation save in certain special circumstances. One such circumstance is where a lawyer gives an undertaking to the court for the benefit of the opposing party to the litigation<sup>10</sup>.

### **2.3 Standard of Care**

The duty of care that a lawyer owes a client is only discharged when a certain standard is reached in carrying out his functions. In this regard, the standard of care and skill demanded of the lawyer is that of a reasonably competent and diligent legal practitioner. The agreement between the lawyer and the client sometimes sets out the standard of care required of the solicitor in order to discharge the duty of care owed to the client<sup>11</sup>.

Despite the standard of care required of a lawyer being high, he or she can discharge himself from a negligence claim if it can be shown that he acted within the general approved practice. This is so even if a body of opinion were to take a contrary view<sup>12</sup>. Thus in *Stevenson v Rowand*<sup>13</sup>, it was held that were a solicitor has acted within the general practice of the profession but has made some error, a finding of negligence will not be made, save in rare circumstances. On the contrary, where a solicitor fails to adhere to such general practice and a mistake occurred, a finding of negligence is usually inevitable.

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<sup>9</sup> [1995] 2.AC 207

<sup>10</sup> Thomas, *Professional Negligence*, 52.

<sup>11</sup> R.A. Percy, *Charlsworth & Percy on Negligence* (London: Sweet & Maxwell, 1990)

<sup>12</sup> Bolam v. Friern Hospital Management Committee [1957] W.L.R. 582

<sup>13</sup> [1830] Ch.D104

Further, it has been submitted that ignorance of the law on the part of the lawyer may amount to negligence. An attorney is not expected to know all the law and not answerable for error of judgement upon points of new occurrences. However, he is liable for all the consequences of ignorance or non-observance of the rules of court, for want of care in the preparation of the cause for trial and for the mismanagement of so much of the conduct of a cause as is usually and ordinarily allotted to his department of the profession<sup>14</sup>.

#### **2.4 Instances of Negligence in the Legal Profession**

R.A Percy<sup>15</sup> in his book sets out a number of instances from case law in which a solicitor was found negligent and these include the following:

A solicitor has been liable in negligence for proceeding under a wrong section of a statute; deliberately allowing time to run out, without getting any instruction in consequence of which an action for damages became statute barred. Failing to bear in mind the period of limitation, as a result of which this client did not bring an action for personal injuries against the defendants within that limitation period; bringing an action in a court which had no jurisdiction; bringing an action which might have been taken in county court in a superior court without first warning his client of the possible consequences as to costs. Not informing his client the assignee of an insolvent debtor that he was personally liable for the costs of an action. Not warning his client that unusual expense might have to be borne by the client himself, whatever the result of the action, in advising a client involved in litigation to accept the other party's guarantee for costs without making any inquiry as to the value of that party's equity in his house or the extent of his beneficial interest.

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<sup>14</sup>R.A. Percy, *Charlsworth and Percy on Negligence*, 231.

<sup>15</sup>R.A. Percy, *Charlsworth & Percy on Negligence*, 244-247.

A solicitor has also been held liable for failing to take action by serving the necessary counter notice because of some internal failure in the office to communicate those verbal instructions to the appropriate person in the firm. Failing to watch the court list, so that his client was unrepresented at the hearing; where counsel was necessary. Failing to follow his advice on evidence, failing to see the witnesses before the trial where his personal attendance was necessary, failing to attend at the hearing. Whilst acting for the buyer of property, making no inquiry as to the standard rent; making a mistake in drawing up a decree, failing to deliver a pleading.

Also failing to take reasonable steps to ascertain the truth of a statement made to the court because of which a wrong order was made, neglected to attend a summons whereby the master was unable to proceed with an order of reference. Furthermore, solicitors were held liable for bringing an appeal for their own purposes and not in the interest of the client. For failing to make an application on behalf of an injured child workman, for review within six months of attaining his majority. Lastly, a solicitor was held liable in negligence for allowing a client's action to be dismissed for want of prosecution as a result of the inexcusable delay in bringing the action to trial.

However, solicitors were not in breach of duty in failing to advise a school compromising a claim made against it by the parents of pupils at the school, of the possibility that the pupils themselves, on attaining their majority might also sue; the solicitor were justified in considering that a remote chance, which in any case it would not be possible to prevent.

## **2.5 The Lawyer Client Relationship**

The lawyer client relationship is the basis of professional practice. It is a fiduciary relationship subsisting between lawyer and client which obviously brings rewards but which also carries with it onerous responsibilities, risks and pressures<sup>16</sup>.

### **2.5.1 Responsibilities of a Lawyer**

Lawyers have a special privilege in society, which is based around the notions of professionalism. In this regard, members of this profession have certain responsibilities imposed on them by rules of conduct, common law and procedural rules. A lawyer is a representative of clients, an officer of the legal system and a public citizen having special responsibility for the quality of justice. The responsibilities of counsel were put into perspective by Lord Reid in the case of *Rodnel v. Worsely*<sup>17</sup> wherein he stated thus:

*“Every counsel has a duty to his client fearlessly to raise every issue, advance every argument, and ask every question, however distasteful, which he thinks will help his client's case. But, as an officer of the Court concerned in the administration of justice, he has an overriding duty to the Court, to the standards of his profession, and to the public, which may and often does lead to a conflict with his client's wishes or with what the client thinks are his personal interests. Counsel must not mislead the Court, he must not lend himself to casting aspersions on the other party or witnesses for which there is no sufficient basis in the information in his possession, he must not withhold authorities or documents which may tell against his clients but which the law or the standards of his profession require him to produce.”*

In Zambia, the responsibilities or duties of a lawyer are contained in the Rules of Conduct. In these rules, the duties of a lawyer are threefold, notably, to the court, the client and to ensure the proper administration of justice. Pursuant to the Legal Practitioners Rules of Conduct, a practitioner has a duty to the Court to ensure that the proper and efficient administration of

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<sup>16</sup> William R. Thomas, *Professional Negligence* (London: Sweet & Maxwell, 1960) 5.

<sup>17</sup>[1967] 3 All ER, p 993.

justice is achieved and in so doing shall ensure that the court is informed of all relevant decisions and legislative provisions of which the practitioner is aware whether the effect is favourable or unfavourable towards the contention for which the practitioner argues and shall bring any procedural irregularity to the attention of the court during the hearing and not reserve such matter to be raised on appeal<sup>18</sup>.

The duty to the client is deemed paramount; this essentially implies that in conducting a matter for a client a lawyer's primary consideration is the client's best interests and not those of the opposing party or anyone else. However, the duty to the client cannot override a lawyer's duty to the court and to the administration of justice. It is provided that a lawyer has a duty to act in good faith towards the client<sup>19</sup>, and not to disclose, unless lawfully ordered to do so by the Court or as required by statute what has been communicated to the practitioner in the capacity as practitioner even if the practitioner has ceased to be the client's practitioner<sup>20</sup>. A lawyer is personally responsible for the conduct and presentation of the client's case, and in all professional activities be courteous and act promptly, conscientiously, diligently and with reasonable competence and take all reasonable and practicable steps to avoid unnecessary expense or waste of the court's time and to ensure that professional engagements are fulfilled<sup>21</sup>. He or she is expected to maintain communication with a client concerning the representation and to follow instructions only from the client. The duty to follow instructions is reiterated in section 52 (a) of the Legal Practitioners Act which provides that "No practitioner shall take instructions in any case except from the party on whose behalf he is retained or some person who is the recognised agent of such party, or

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<sup>18</sup> Rule 32 (2) and 36 (1) (a) of the Legal Practitioners' Rules (SI No 51 of 2002)

<sup>19</sup> Rule 32 (3) of the Legal Practitioners' Practice Rules

<sup>20</sup> Rule 32 (4) (e) of the Legal Practitioners' Practice Rules

<sup>21</sup> Rule 36 (1) (a) and Rule 35 of the Legal Practitioners' Practice Rules



some servant, relation or friend authorised by the party to give such instructions<sup>22</sup>.” Failure to obtain instructions from the client on whose behalf a lawyer is acting is an offence<sup>23</sup>.

A lawyer is obliged to keep a client's confidences and secrets relating to representation except so far as disclosure is required or permitted by the Rules of Professional Conduct or other law. A lawyer is also expected to maintain the duty of confidentiality whether or not the relation of practitioner and client continues<sup>24</sup>. Thus, in so doing, a lawyer can be sure that preserving client confidences ordinarily serves the public interest because people are more likely to seek legal advice, and thereby heed their legal obligations, when they know their communications will be private.

It is well settled that a solicitor has a fiduciary duty to his or her client. That duty carries with it two presently relevant responsibilities. The first is the obligation to avoid any conflict between his duty to his client and his own interests; he must not make a profit or secure a benefit, at the expense of his client's expense. The second arises when he endeavours to serve two masters and is required to make full disclosure to both<sup>25</sup>.

A lawyer's conduct should conform to the requirements of the law, both in professional service to clients and in the lawyer's business and personal affairs. A lawyer should use the law's procedures only for legitimate purposes and not to harass or intimidate others. A lawyer should demonstrate respect for the legal system and for those who serve it, including judges, other lawyers and public officials<sup>26</sup>.

As a public citizen, a lawyer should seek improvement of the law, the administration of justice and the quality of service rendered by the legal profession. As a member of a learned

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<sup>22</sup> Chapter 30 of the Laws of Zambia

<sup>23</sup> Section 53 of the Legal Practitioners Act

<sup>24</sup> Rule 35 (2) of the Legal Practitioners' Practice Rules

<sup>25</sup> Peter Macfarlane, "The Importance of Ethics and Application of Ethical Principles in the Legal Profession," *Journal of South Pacific Law* no.6 (2002): 388.

<sup>26</sup> Adams Gorlin, *Codes of Professional Responsibility*, 245.

profession, a lawyer should cultivate knowledge of the law beyond its use for clients; employ that knowledge in reform of the law and work to strengthen legal education. A lawyer should be mindful of deficiencies in the administration of justice and of the fact that the poor, and sometimes persons who are not poor, cannot afford competent legal assistance, and should therefore devote professional time and civic influence in their behalf. A lawyer should aid the legal profession in pursuing these objectives and should help the bar regulate itself in the public interest. A lawyer should strive to attain the highest level of skill, to improve the law and the legal profession and to exemplify the legal profession's ideals of public service<sup>27</sup>.

Responsibilities of a lawyer have been reiterated in a number of Zambian cases. For instance, in the case of *Industrial Finance Co Ltd v Jacques & Partners Ltd*<sup>28</sup>, it was submitted that where a lawyer has instructions, he has a professional duty to protect his client so that where it is shown that the advocate has failed to exercise his duty to the client, the lawyer must make good and pay for that damage. In addition, in the case of *The People v Tembo*<sup>29</sup>, it was held that counsel is under an obligation to conduct the case according to instructions given to him rather than on how he himself thought best, and if counsel feels that he cannot further assist his client because his advice is not accepted, then he should so inform the court of trial and ask to be permitted to withdraw from the case. In the case of *Zambia Telecommunications Company Limited v. Zambia Electricity Supply Corporation Limited*<sup>30</sup>, the High Court held that lawyers have a duty to the profession and to the cause of justice to appear to be acting fairly and impartially, as such, a lawyer who is obviously conflicted in a matter should as a matter of professional obligation be able to advise a potential client that their involvement in a matter would raise issues of conflict.

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<sup>27</sup>Supra note 32

<sup>28</sup>(1981) Z.R. 75

<sup>29</sup>(1972) Z.R. 148

<sup>30</sup>2011/HPC/ 0665.

Further, in *The People v. Edward Jack Shamwana & 12 others*<sup>31</sup>, the scope of the lawyer's duty was discussed. In that case, it was held that it was the duty of a lawyer to defend his client no matter how serious the crime is, but that duty does not extend to helping the client escape justice or assisting in preventing the course of justice. Lastly, in *Lungu v the Queen*<sup>32</sup>, the appellant was accused of murder and was convicted, he wished to appeal against the conviction but counsel representing him submitted that there was no ground of appeal; counsel was gravely criticised for this decision. Conroy, C.J. had this to say:

*"I take the opportunity to reiterate what is the settled practice as to the duty of counsel in such cases. The action taken by Mr. McLellan - Shields was perfectly proper and in accordance with the traditions of the Bar. No other course was open to him. The duty of counsel is to go through the record with the greatest care. If he is unable to find any ground which can be argued before the court of appeal it is his duty to say so. It is his duty to attend in court and to assist the court if the court wishes to raise any matter. It is not the duty of counsel to invent points, or put forward points which he knows are frivolous or will not bear examination."*

### **2.5.2 Client's Rights and Responsibilities**

Good communication is essential to effective lawyer-client relationship. A lawyer should ensure that a new or prospective client has a full understanding of the nature of the attorney-client relationship, including what the lawyer can reasonably expect from the client. If the client does not have such an understanding, the lawyer shall take reasonable steps to educate the client about the relationship<sup>33</sup>.

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<sup>31</sup>(1982) Z.R. 122

<sup>32</sup>(1963-64) Z.R. 130

<sup>33</sup>Peter MacFarlane, "The Importance of Ethics and the Application of Ethical Principles in the Legal Profession," *Journal of South Pacific law* no. 6 (2002): 388-391.

A client, just like a lawyer also has certain rights and obligations. To begin with, a client has a right to receive competent, diligent and skilful legal service from his or her lawyer. A client also has a right not to have information given to a lawyer in confidence divulged to the public. A lawyer is to explain to a client when the statements made or secrets revealed about the case cannot be kept confidential. A lawyer is to charge the client a reasonable fee and explain how it will be computed and when payments are expected. Furthermore, it is the client's right to make final decisions regarding the legal matter. Such matters include for example, discussing with the client the negotiation process so that he or she can agree to a settlement offer rightly approved by him<sup>34</sup>.

A client is under an obligation to make a full and honest disclosure of all of the facts - good and bad - that relate to the legal matter, and to inform the lawyer about any new facts or circumstances that may affect the case as they arise. Additionally, a client is required to adhere to the fee agreement made with the lawyer, to pay bills for all work that has been performed, and pay for all costs advanced. A client is also expected to seek his lawyer's advice before discussing any information relating to the legal matter with others, and to tell the lawyer if there are any concerns or reservations about the advice being given<sup>35</sup>.

## 2.7 Conclusion

In conclusion, this Chapter has discussed the general principles of professional negligence in the legal profession. In this regard, it has defined who a client as well as a legal practitioner is. The concept of duty, as well as the standard of care required of a legal practitioner has also been discussed. The discussion was concluded by giving instances of negligence in the legal

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<sup>34</sup>Supra note

<sup>35</sup>Adams Gorlin, *Codes of Professional Responsibility* (Washington, D.C.: Bureau of National Affairs, 1994).

profession by way of example, and the rights and obligations of both the lawyer and the client.

## **CHAPTER THREE**

### **CAUSES OF NEGLIGENCE CLAIMS AGAINST LAWYERS AND RESPONSE TO SUCH CLAIMS IN ZAMBIA**

#### **3.0 Introduction**

This Chapter shall firstly look at the factors that contribute to professional negligence claims against Zambian lawyers. The various efforts, including legislative and judicial, aimed at responding to such claims, as well as the extent of insurance coverage will be discussed. In so doing, a comparative analysis of how other jurisdictions, notably the United Kingdom and Australia have responded to such claims will be given. Finally a conclusion will be drawn summarising the submissions of this chapter.

#### **3.1 Causes of Negligence Claims against Zambian Lawyers**

Interviews conducted with some members of the Legal Practitioners Committee and other prominent Zambian lawyers as well as members of the public reviewed a number of reasons that give rise to negligence claims. It is worth noting that such claims arise whether the lawyer has been negligent or not or when he has made an error of judgment. This is because most clients merely lodge a complaint after they have lost a case, claiming that their lawyer has failed to understand and respond to their expectations, regardless of whether these expectations are reasonable or not. In addition, it was opined by some of the respondents that most clients do not understand the risks or chances of success for their matter and when they lose, they attribute it to negligence on the part of the legal practitioner.

However, the underlying cause from which all other complaints flow as identified by most respondents in this research is poor communication; either the lawyer does not keep the client informed or the client is not clear of what to expect from the lawyer. Some lawyers do not

fully analyse the cases and fully, as well as truthfully advise clients about the risks involved in the case. Another cause relates to giving legal advice that is incomplete, inappropriate (mistake regarding the type of claim the client should pursue) due to failure on the part of the lawyer to probe deeply enough, and not rendering advice at all. undue delay, that is, failure by the lawyer representing a client to attend to a case within a reasonable time, and during trial, failure to give evidence that is vital hence the client losing his case.

**3.2 Legislative Response**

A number of statutes in Zambia either implicitly or explicitly, try to curtail incidents of negligence claims against lawyers. These include the Law Association of Zambia Act, the Legal Practitioners Act as well as the Legal Practitioners’ Practice Rules (Statutory Instrument number 51 of 2002).

**3.2.1 The Law Association of Zambia Act**

The Law Association of Zambia (LAZ) is the principle professional association of Zambian Lawyers. It is a body corporate established by the Law Association of Zambia Act, Chapter 31 of the Laws of Zambia<sup>1</sup>. Amongst the functions of this association as set out in section 4 of the Act are: to protect and assist the public in all matters touching, ancillary or incidental to the legal profession and to maintain and improve the standards of conduct of all members of the legal profession<sup>2</sup>.

This association through its Legal Practitioners Committee (LPC) handles cases from the public of alleged professional misconduct against Legal Practitioners. Complaints handled by the committee include: conflict of interest, poor communication between the Practitioner and his client, failing to account for monies received by the Practitioner on behalf of or from the

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<sup>1</sup>Section 3 of Cap 31 of the Laws of Zambia

<sup>2</sup> Chapter 31 of the Laws of Zambia

client, failing to execute or acting contrary to the client's instructions and not taking written instructions from clients causing misunderstanding between Practitioner and client. Complaints on alleged unjustified bills for the services rendered not agreed upon by the parties prior to acting upon client's instructions, failure by Practitioner to hand back files to client after withdrawal of instructions, alleged harassment from Practitioners where refund of monies and deposits paid are requested for, when instructions are withdrawn by a client , complaints against Practitioner in respect of alleged unprofessional language used to clients and fellow Practitioners, and complaints on costs awarded and out of pocket expenses<sup>3</sup>.

In this regard, clients who have any complaints which border on professional negligence of a legal practitioner can lodge a formal-written complaint by way of an affidavit attaching all relevant documentation in support of the complaint addressed to the Honorary Secretary. The Legal Practitioners Committee has a permanent office at the LAZ Secretariat in Lusaka with an Administrative Assistant who attends to complaints. On the Copperbelt, all complaints are lodged with the Honorary Secretary (Copperbelt). Lodging a complaint attracts a fee of K 50,000.00<sup>4</sup>.

Where a Legal Practitioner is found to have misconducted himself or herself unprofessionally; the Committee may suspend the Legal Practitioner and refer the matter to the LAZ Disciplinary Committee at the Ministry of Justice. If the LAZ Disciplinary Committee establishes a prima-facie case against a known Legal Practitioner, the Committee may impose sanctions they may deem fit such as admonish, censure, suspend and/or recommend to the Chief Justice to strike the Legal Practitioner off the Roll of Practitioners. In this connection, section 22A. (1) Of the Legal Practitioners Act provides:

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<sup>3</sup> The Law Association of Zambia, Complaint Handling Procedure of the LPC, <http://www.laz.org.zm>. (accessed on 12<sup>th</sup> April, 2012).

<sup>4</sup> LAZ, Complaint Handling Procedure of the LPC, <http://www.laz.org.zm>. (accessed on 12<sup>th</sup> April, 2012).



*“ Where an application under paragraph (b) of subsection (1) of section twenty-two discloses a prima facie case of misconduct, the Disciplinary Committee may advise the Practitioners’ Committee, appointed under section thirteen of the Law Association of Zambia Act, to suspend the practising certificate of the practitioner to whom the application relates for such period as the Practitioners’ Committee may determine pending the determination of the case, if the Disciplinary Committee is satisfied that such suspension is necessary in order to safeguard the interests of the public.”<sup>5</sup>*

Furthermore, if the Disciplinary Committee is of the opinion that the matter is a serious one and merits more severe punishment, it will proceed by way of report before the registrar. The registrar may then appoint a panel of judges comprising of two judges from the High Court. After considering the merits of the case, the panel court may make an order against such practitioner for the payment of costs of the proceedings, pay restitution or compensation as the case may be, and were the matter is extremely serious, strike the practitioner off the roll.

The complaint handling procedure of the LPC of LAZ help the public out there to have recourse if they feel their lawyer did not perform his or her functions in a professional manner. This is a better off procedure that helps ensure that Zambian lawyers maintain high professional standards at the bar. It is also advantageous to the client because it is less costly than going to court, and moreover, court process takes longer before an issue can be resolved. In addition, from the practitioner’s point of view before the LPC are confidential to protect the image of the practitioner.

The Australian Law Society employs a similar procedure of dealing with complaints about legal practitioners. The Legal Professions Complaints Committee receives complaints from the public ranging from misconduct to negligence on the part of legal practitioners. A person

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<sup>5</sup> The Legal Practitioners Act, Chapter 30 of the Laws of Zambia.

with a complaint is required to lodge a complaint in writing to the said Committee which is dealt with in a similar fashion as the Legal Practitioners Committee of LAZ<sup>6</sup>.

**3.2.2. The Legal Practitioners Act**

The educational qualifications required before one is deemed a legal practitioner as set out in Section 11 of the Legal Practitioners Act ensure that one obtains the requisite skill and competence before he can be admitted to the roll of practitioners<sup>7</sup>. This helps to ensure that high professional standards are maintained because the assumption is that when one undergoes such training to be a lawyer, they are expected to act reasonably and competently when rendering advice to members of the public. Additionally, the same Act in section 52 outlines offences by legal practitioners which are deemed professional misconduct. Of importance to this Essay is section 52 (a) which makes it an offence for any legal practitioner to take instructions from any other person apart from his client or authorised agent of such client. This provision helps to reinforce the duty on the part of the lawyer to follow instructions only from his client thereby reducing propensity of having negligence legal suits based on the failure to follow instructions against lawyers<sup>8</sup>.

**The Legal Practitioners’ Practice Rules (SI No 51 of 2002)**

In addition to the above Acts, Zambian Lawyers are regulated by the Legal Practitioners’ Practice Rules which were promulgated pursuant to section 99 of the Legal Practitioners Act. These rules clearly set out the standards of conduct as well as the duties of a lawyer to ensure high professional standards at the bar. In terms of rule 41<sup>9</sup>, breaches of these rules amounts to

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<sup>6</sup>Ronwyn North and Peter North, *Managing Client Expectations and Professional Risk: A Unique Insight into Professional Negligence Exposure in the Australian Legal Profession* (Cammeray: Streeton Consulting Pty Ltd, 1994).

<sup>7</sup>Cap 30 of the Laws of Zambia.

<sup>8</sup> Section 52 of the Legal Practitioners Act

<sup>9</sup> The Legal Practitioners’ Practice Rules

professional misconduct or conduct unbefitting a practitioner and can therefore attract disciplinary proceedings or legal suit in negligence. The rules set out below are particularly important to this Essay.

Rule 35 (1) (a) imposes an obligation on the legal practitioner in all professional activities to be courteous and act promptly, conscientiously, diligently and with reasonable competence and take all reasonable and practicable steps to avoid unnecessary expense or waste of the court's time and to ensure that professional engagements are fulfilled<sup>10</sup>.

Rule 14 obliges a practitioner in private practice to ensure that clients are at all relevant times are given appropriate information as to the issues raised and the progress on the matter. Additionally, rule 36 (a) provides that a practitioner shall be personally responsible for the conduct and presentation of the client's case and shall exercise personal judgment upon the substance and Purpose of statements made and questions asked. Further, rule 33 (1) (a) proscribes any legal practitioner from accepting any brief if to do so would cause the practitioner to be professionally embarrassed where the practitioner lacks sufficient experience or competence to handle the matter, or if the experience of advocacy of the practitioner in the relevant Court of proceedings has been so infrequent or so remote in time as to affect the competence of the practitioner<sup>11</sup>.

### **3.3 Judicial Response**

After a thorough search in the Zambia Law Reports, only one case of negligence against legal practitioners, that is, *Industrial Finance Co Ltd v Jacques & Partners Ltd*<sup>12</sup> was found. In that case, the plaintiff's claim was for damages for professional negligence arising out of the

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<sup>10</sup> The Legal Practitioners' Practice Rules

<sup>11</sup> The Legal Practitioners' Practice Rules

<sup>12</sup>(1981) Z.R 75

defendant's failure to comply with the plaintiff's specific written instructions dated the 19th December, 1975, and 5th January, 1976, to the effect that the defendant should defend the action between Kentwood Investments Limited and the plaintiff, in case number 1975/HK/379. The plaintiff lost all prospects of defending the action in the said sum of K83,997.92 claimed by the said Kentwood Investments Limited and the plaintiff were thereby deprived of the chance of success in the said action and they have thereby suffered loss and damages, the plaintiff further claimed the sum of K87,944.21 as special damages. The court found no negligence on the part of the advocates in this case because no proper instructions were given to them at the relevant time as claimed by the plaintiff. The High Court further pointed out that where a lawyer has instructions, he has a professional duty to protect his client so that where it is shown that the advocate has failed to exercise his duty to the cost of his client, the lawyer must make good and pay for that damage.

Absence of case law does not mean that Zambian lawyers are never negligent; however, there are few cases in which lawyers are readily negligent. Law is not a scientific subject and therefore subject to many opinions, it is in light to the foregoing, a plaintiff who claims that poor advocacy resulted in an unfavourable outcome will face the very great obstacle of showing that a better standard of advocacy would have resulted in a more favourable outcome. Another reason for such absence of case law seems to be that a considerable number of clients are ignorant of their right to sue in the courts of law where they feel wrong advice was rendered to them by their lawyer. On the other hand, for clients who are aware of their rights, especially the poor prefer to employ the procedure under the Legal Practitioners Committee. This is because as earlier stated, court process takes longer before an issue is resolved and it is cheaper because only a fee of K 50,000 is payable upon lodging a complaint with the Legal Practitioners Committee.

### **3.3.1. The Concept of Wasted Costs**

In the United Kingdom, another way in which negligent legal practitioners are dealt with is by ordering them to meet the whole of or any part of the wasted costs. Section 51 (6) of the Supreme Court Act<sup>13</sup> which was later replaced by section 4 of the Courts and Legal Services Act of 1990<sup>14</sup>, endowed the court with power to make such wasted costs orders against legal practitioners. Wasted costs are defined in the said section as costs incurred by a party

*“(a) as a result of any improper, unreasonable or negligent act or omission on the part of any legal or other representative or any employee of such representative; or*

*(b) which in the light of any such act or omission occurring after they were incurred, the court considers it unreasonable for that party to pay.”*

In light of the above provisions, the case of *Reidhalgh v. Horsefield*<sup>15</sup> laid down a three staged test before a wasted costs order can be made. It was submitted that the court must decide whether there has been some improper, unreasonable or negligent act or omission by the representative it is sought to condemn in costs; whether as a result unnecessary costs were incurred; and finally, whether in all the circumstances it would be just to order the representative to pay those costs or part of them. It has further been submitted by Sir Thomas Bingham that ‘improper’ in this context suggests, but is not confined to, conduct which would ordinarily involve disbarment, striking off or suspension. ‘Unreasonable’ on the other hand described conduct which is vexatious or designed to harass the other party rather than advance the case. Finally, the word ‘negligent’ in the definition is not to be understood in a technical sense but describes a failure to act with the competence reasonably to be expected

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<sup>13</sup> The Supreme Court Act, 1981.

<sup>14</sup> Courts and Legal Services Act, 1990.

<sup>15</sup> [1994] Ch. 205

of an ordinary member of the profession and is no less a test than is applied in deciding whether an action for negligence against a legal practitioner is made out<sup>16</sup>.

The rationale for wasted costs orders was given in the case of *Kelly v. Jowett*<sup>17</sup> by justice McColl that:

*“The underlying principle is that the court has a right and a duty to supervise the conduct of its solicitors, and visit with penalties any conduct of a solicitor which is of such a nature as to tend to defeat justice in the very cause in which the solicitor is engaged professionally. The jurisdiction is exercised where it is demonstrated that the solicitor has failed to fulfil his or her duty to the Court and to realise his or her duty to aid in promoting in his own sphere the cause of justice.”*

Wasted costs orders have been ordered by the English courts against legal practitioners in a number of cases, for instance, in the case of *Kilroy v. Kilroy*<sup>18</sup> the judge used the steps advanced above when he identified the unreasonable conduct or negligence, that is, undue delay, and then went on to order the legal practitioner to pay the wasted costs caused by that conduct. Additionally, in *Isaacs Partnership v. Umm Al-Jawaby Oil Service Company Ltd*<sup>19</sup>, a contract claim in which solicitors acting for the claimant started proceedings without first obtaining a copy of the relevant document, and continued the action in spite of the defendants protestations which turned out to be correct that it was not a party to the contract concerned, commencement of such proceedings against a party without having any or due regard to a basic precondition of that party’s liability was held to be capable of constituting negligence akin to an abuse of process.

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<sup>16</sup>*Ridelhalg v. Horsfield* [1994] Ch. 205, per Lord Bingham at 233

<sup>17</sup> [2009] NSWCA 278, per Justice McColl at p. 60

<sup>18</sup>[1997] P.N.L.R 66, CA.

<sup>19</sup>[2004] P.N.L.R. 136

Further, in the case of *Morris v. Roberts*<sup>20</sup> in which solicitors were implicated in conduct designed to frustrate revenue's enforcement of court orders against their client, it was noted that a legal representative will be liable to a wasted costs order if, exercising the objective professional judgment of a reasonably competent solicitor, he ought reasonably to have appreciated that the litigation in which he was acting, constituted an abuse of process.

On the contrary, in the case of *Dempsey v. Johnstone*<sup>21</sup>, the gist of the allegation against the legal representatives was that they had pursued a hopeless case when it ought to have been appreciated by a reasonably competent practitioner that it would fail. However, after the disclosure of an unreported case at a hearing which persuaded the legal practitioners that their client's case was unarguable and they did not resist an application to strike out the claim, the Court of Appeal observed that this did not establish that their prior evaluation of the case was negligent. Their decision to concede the case application was taken in the course of a hearing in which arguments for the defendant were being deployed and the judge's reaction to them apparent.

It is worth mentioning that the wasted costs procedure is effective in ensuring that legal practitioners act competently when representing their clients because it is intended to be a summary one, and as Bingham M.R. pointed out, "hearings should be measured in hours and not in days or weeks<sup>22</sup>."

Suffice to point out that Zambia does not have provisions in its legislation equivalent to the British Act, conferring an express power on the courts to make an order of wasted costs against a legal practitioner who acts negligently or unreasonably in the conduct of his client's case.

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<sup>20</sup> [2005] P.N.L.R. 136, per Lord Lightman at 847.

<sup>21</sup> [2004] P.N.L.R. 25, CA.

<sup>22</sup> Per Lord Bingham M.R. in *Ridgeway v. Horsfield* [1994] Ch. 205, 208.

### **3.3.2. The Immunity of Lawyers from Negligence Suits**

For more than two centuries, barristers in England and Australia as well as other states, advocates have enjoyed immunity from actions in negligence. The reasons for this immunity were various, they ranged from the dignity of the Bar, the "cab rank" principle, the assumption that barristers may not sue for their fees, the undesirability of relitigating cases decided or settled, and the duty of a barrister to the court.

However, in 1967, the House of Lords pointed out in the case of *Rodnel v. Worsely*<sup>23</sup> that the dignity of the Bar was no longer regarded as a principle consideration which justified conferring an immunity on advocates whilst withholding it from all other professional men. The main reason for such immunity was said to be for public policy considerations. It is worth recalling that in that case the appellant had obtained the services of the respondent to defend him on a dock brief, and alleged that the respondent had been negligent in the conduct of his defence. It is undoubtedly right, as counsel for the solicitors submitted and nobody disputed, that the principal ground of the decision is the overriding duty of a barrister to the court. The House thought that the existence of liability in negligence, and indeed the very possibility of making assertions of liability against a barrister, might tend to undermine the willingness of barristers to carry out their duties to the court. There were however other supporting reasons; perhaps the most important was the undesirability of relitigating issues already decided.

Eleven years later in *Saif Aliv. Sydney Smith Mitchell & Co*<sup>24</sup>, the House of Lords revisited this topic. On this occasion the immunity established in *Rodnel v. Worsely*<sup>25</sup> was not challenged and was not directly in issue. The terrain of the debate centred on the scope of the

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<sup>23</sup> [1967] 3 All ER. 993

<sup>24</sup> [1980] AC. 198.

<sup>25</sup> [1967] 3 All ER. 993



immunity. Except for Lord Diplock, the members of the House of Lords accepted the rationale of *Rodnel v. Worsely*, which Lord Wilberforce said, at page 213, was that "barristers have a special status, just as a trial has a special character: some immunity is necessary in the public interest, even if, in some rare cases, an individual may suffer loss." Lord Diplock did, however, think that the immunity could be justified on two other grounds, that is, the analogy of the general immunity from civil liability which attaches to all persons in respect of the participation in proceedings before a court of justice, namely judges, court officials, witnesses, parties, counsel and solicitors alike. The second was the public interest in not permitting decisions to be challenged by collateral proceedings.

It must however be stated that the said immunity in the England has been moderated by the introduction of the power by the court to make wasted costs orders against negligent barristers and solicitors in conducting a case for a client<sup>26</sup>. The concept of wasted costs has already been discussed above

There have been petitions in Australia addressed to Parliament to remove the immunity of barristers from being sued in negligence. A number of arguments by the petitioners have been advanced. It has been argued that equality under the law is supposed to be a fundamental tenet of the rule of law, yet lawyers in Australia have been granted a unique immunity that effectively places them above the law. Further, the current situation provides no disincentive to discourage lawyers from being negligent in preparing their clients' cases, and too often results in people being wrongfully imprisoned as a result of either such negligence, or through being given incorrect advice that suits the lawyers' agendas. Yet no matter how

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<sup>26</sup> Section 4 of the Courts and Legal Services Act, 1990 of England.

serious the loss of liberty or financial security that a lawyer may cause their client through negligent actions or poor advice, said client has no recourse in law to seek recompense<sup>27</sup>.

Zambian lawyers on the other hand are not immune from being sued in negligence, for instance rule 36 (a) of the Practice Rules provides that a practitioner “Shall be personally responsible for the conduct and presentation of the client’s case and shall exercise personal judgment upon the substance and Purpose of statements made and question asked”. Additionally, breach of the duty to act diligently and with proper care and skill set out in rule 35 (1) (a) attracts both legal as well as disciplinary proceedings against a lawyer<sup>28</sup>.

**3.4 The Extent of Insurance Coverage**

As pointed out in the introductory chapter, professionals, lawyers inclusive, have or will at least in their life time be subject to negligence claims or other claims. Most Lawyers interviewed attested to the fact that they have at least once during their years of practice been accused of being negligent by a client. In view of this reality, it is of great importance for them to protect themselves from the rising costs of paying damages to clients in negligence suits as well as legal costs. Professional indemnity policies have been recognised as one of the ways professionals can obtain such protection<sup>29</sup>. Therefore, before considering the extent to which such policies are utilised by Zambian lawyers, a brief exposition of the concept of insurance is imperative.

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<sup>27</sup> Mary Cotter, Parliament Petition (Preston: Change. org. Inc, 2012) available at <http://www.change.org/petition> parliament of Australia.( accessed on 12<sup>th</sup> April, 2012).

<sup>28</sup> The Legal Practitioners’ Practice Rules.

<sup>29</sup> Ronwyn North and Peter North, Managing Client Expectations and Professional Risk: *A Unique Insight into Professional Negligence Exposure in the Australian Legal Profession* (Cammeray: Streeton Consulting Pty Ltd, 1994).

According to Lowe<sup>30</sup>, the term insurance simply denotes a contract by which a person or company agrees, in return for a premium, to pay a sum of money to another person or company on the happening of a certain event, or to indemnify the insured against loss caused by the risk insured against. In the case of *Prudential Insurance Company v. Inland Revenue Commissioners*<sup>31</sup>, a contract of insurance was defined by Chandel J. as one whereby one party (the insurer) promises in return for a money consideration (the premium) to pay to the other party (insured) a sum of money or to provide him with a corresponding benefit upon the occurrence of one or more of the specified events.

Apart from life assurance, all contracts of insurance are indemnity policies, essentially aimed at making good the loss suffered by the insured. The principle of indemnity states that the insured cannot recover or retain for his benefit, more than his actual loss. Upon the occurrence of the risk insured against and the insured suffers a loss, he must be placed in the same position he was in immediately before the loss occurred<sup>32</sup>.

From the above explanation of the nature of indemnity policies, it is evident that they are not aimed at preventing the occurrence of negligence claims against lawyers; on the contrary professional indemnity insurance is designed to provide for cover such as legal costs for the person who holds the insurance if should a claim of professional negligence be brought against them. In this way, professional indemnity insurance protects lawyers from claims made against them by a third party if they make a mistake or are discovered to have performed their duties in a negligent way<sup>33</sup>.

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<sup>30</sup> Robert Lowe, *Commercial Law*, 5<sup>th</sup> ed. (London: Sweet and Maxwell, 1976), 380.

<sup>31</sup> [1904] 2 KB, 258.

<sup>32</sup> Robert Lowe, *Commercial Law*, 399-400.

<sup>33</sup> Steven Warne, *Steven Warne on Professional Negligence, Regulation and Discipline around the World*, available at [www.uk legal website. com](http://www.uklegalwebsite.com). (accessed on 7<sup>th</sup> January, 2012).

In most countries, especially the developed countries, lawyers are legally required to take out professional indemnity policies as a regulatory requirement or as part of the process of becoming a professional. For instance in Australia, the Law Society set up the Mutual Indemnity Fund to provide for professional negligence insurance for all solicitors<sup>34</sup>. Similarly, in the United Kingdom, the Law Society set up the Solicitors Indemnity Fund. However, in Zambia, the taking up of indemnity policies by legal practitioners is not mandatory, however, plans by the LAZ where underway for setting up an indemnity fund for Lawyers, and to accordingly amend Practice Rules so as to make it mandatory for legal practitioners to take professional indemnity policies<sup>35</sup>. However, a considerable number of approximately more than 50% of the law firms interviewed indicated that they do take out professional indemnity policies.

However, the Legal Practitioners Act in section 40 establishes a compensation fund which compensates members of the public for the purpose of relieving or mitigating losses sustained by any person in consequence of dishonesty on the part of any practitioner or any clerk or servant of any practitioner in connection with any such practitioner's practice as a practitioner, or any trust of which such practitioner was a trustee<sup>36</sup>. Pursuant to section 40 (3) every practitioner is required to fund an amount as resolved by LAZ. The fund does not however, mitigate losses suffered as a result of carelessness or negligence by a legal practitioner. It must also be added that the Compensation Fund is a fund of last resort; as such where other avenues for recovery of loss are available to the complainant, the claim will not

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<sup>34</sup>Ronwyn North and Peter North, *Managing Client Expectations and Professional Risk*, 99.

<sup>35</sup>Law Association of Zambia Annual General Meeting Minutes: Report of the Legal Practitioners Committee, 2011, 21.

<sup>36</sup>Cap 30 of the Laws of Zambia.

be allowed to proceed. Further, were a claim is successful, the Fund is only liable to pay actual loss and not damages<sup>37</sup>.

### **3.5 Other Responses**

The provision of intensive training at the various institutions tasked to train lawyers in Zambia for a number of years as well as training at the Zambia Institute of Advanced Legal Education helps to impart such knowledge and skill required of a competent legal practitioner. It is for this reason that these respective institutions should set up high standards so as to enhance the standards of skill and competence of legal practitioners before certifying them as qualified to render professional legal services.

Training offered to lawyers such as the initiative by Juris Practice equips lawyers with the tools to avoid professional liability. Juris Practice is a company and was established as a response to the Law Association of Zambia's resolution that legal practitioners maintain their professional competence by continuing their legal education throughout their active practice of the law. A program called Continuous professional development (CPD) was introduced to help lawyers establish and build a foundation or specialisation in certain practical skills, techniques and procedures. The company has also held a number of different courses ranging from money laundering to due diligence<sup>38</sup>.

### **3.6 Conclusion**

In conclusion, this chapter endeavoured to give the underlying causes of negligence claims against lawyers in Zambia. The Chapter has also discussed the various responses to negligence claims in Zambia including legislative, judicial as well as insurance coverage. In

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<sup>37</sup> The Legal Practitioners Act, Cap 30 of the Laws of Zambia

<sup>38</sup> Juris Practice Zambia, Courses Available. <http://www.jurispractice.co.zm> (accessed on 12<sup>th</sup> April, 2012).

discussing such responses in Zambia, a comparison on how the issue of negligence claims is being dealt with in other jurisdictions has been made.

## **CHAPTER FOUR**

### **RESEARCH FINDINGS, RECOMMENDATIONS AND CONCLUSION.**

#### **4.0 Introduction**

In the introductory Chapter, it was pointed out that the main objective of this Essay was to make a full inquiry into professional negligence claims against legal practitioners in Zambia, as well as insurance coverage in respect of such claims. In a quest to making such an inquiry, the preceding Chapters, particularly Chapter three, sought to find out whether such negligence claims are made against legal practitioners. The Essay also discussed how the profession exposes itself to such claims as well as the responses to such claims in Zambia and selected jurisdictions alike. The aim of discussing such responses was to find out the efficacy of the legal and administrative framework in dealing with such claims. It is therefore the aim of this Chapter to draw some conclusions from the findings of the research. In light of those conclusions, suggest relevant recommendations on the topic at hand with the aim of changing the situation prevailing currently. A general conclusion of the entire Essay will also be given.

#### **4.1 Research Findings**

On the question whether there are any negligence claims against lawyers in Zambia, it was discovered that indeed a number of such claims are made. Though deliberations and hearings from the LAZ Disciplinary Committee are confidential, it is evident from the statistics of claims made; the Committee in the period 2009-2011 heard about 209 cases varying from professional negligence to misappropriation of client's funds<sup>1</sup>.

It was also discovered that unlike the English courts which deal with a flood of negligence claims against lawyers, in Zambia, there is hardly any case law relating to such claims. The

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<sup>1</sup> LAZ AGM Minutes of 2011.

main reasons for such absence include: firstly, lack of awareness on the part of most clients on their right to institute court proceedings where a lawyer renders negligent legal advice. It was also discovered that for those clients who are aware of their rights, preference is made to lodge such complaints with the Legal Practitioners Committee of LAZ instead of instituting court proceedings. This is because court processes take time before a matter is concluded and more costly, whereas the complaint handling procedure of the LPC is more expedient and only attracts a fee of K50, 000<sup>2</sup>.

After conducting a number of interviews with legal practitioners as well as members of the general public, vast causes of negligence claims against legal practitioners were brought to the writer's attention. However, from all the given causes, the writer came to the conclusion that the underlying cause of negligence claims against Zambian lawyers is essentially failures in how the solicitor and the client set up their working relationship in the matter and how this relationship evolves as the matter progresses. As discussed in Chapter two, an ideal lawyer client relationship entails good communication between the lawyer and the client. Lack of proper communication between the lawyer and the client contributes to the lawyer not following a client's instructions. It also leads to lack of appreciation by the client of the risks or chances of success as the lawyer does not clearly explain, hence resulting in claims of negligence on the part of the lawyer when a client loses the case.

The Essay further discussed the responses to negligence claims in Zambia, with the aim of discovering whether measures put in place to deal with such claims are effective. LAZ as the principle association of lawyers in Zambia is mandated under section 4 of LAZ Act to protect and assist the public in all matters touching, ancillary or incidental to the legal profession and

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<sup>2</sup>The Law Association of Zambia, Complaint Handling Procedure of the LPC. Available at <http://www.laz.org.zm> (accessed on 7<sup>th</sup> January, 2012).



to maintain and improve the standards of conduct of all members of the legal profession<sup>3</sup>. LAZ therefore through its Legal Practitioners Committee handles complaints from the public of which negligence claims are included. This procedure is reasonably effective because cases are disposed of expediently compared to the courts, and less costly making it a suitable forum for the less privileged in society<sup>4</sup>. However, in as much as it is a good initiative to ensure lawyers do not fall below the standards at the bar, the Association only has offices in Lusaka and the Copper Belt where members of the public can lodge their complaints.

Furthermore, the Legal Practitioners Act sets out minimum educational qualifications before one can be deemed a legal practitioner<sup>5</sup>, this somehow serves the purpose of ensuring that legal practitioners obtain the requisite skills, competence and thus perform their services diligently. This Act makes an attempt to limit the number of negligence claims in section 52 which sets offences deemed misconduct on the part of the practitioner. In particular, subsection (a) of this section implicitly acts as a restraint on lawyers by imposing an obligation on them to follow instructions only from their client or his authorised agent<sup>6</sup>. The Legal Practitioners' Practice Rules also set out a number of duties on lawyers towards their client which ensure that they act with the highest standard of care and skill towards their clients.

It was appreciated that some claims against legal practitioners may cost huge sums of money in an event that they are found liable. Given that such claims are unavoidable despite a practitioner exercising all diligence, insurance policies come in to protect the lawyer in the event of being found liable. Therefore one of the tasks of this research was to find out the extent to which such policies are utilised by Zambian lawyers. The research revealed that a

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<sup>3</sup> Chapter 31 of the Laws of Zambia

<sup>4</sup> Cap 31 of the Laws of Zambia

<sup>5</sup> Section 11 of Cap 30

<sup>6</sup> Section 51 of the Legal Practitioners Act, Cap 30 of the Laws of Zambia

reasonable number of legal practitioners in Zambia do utilise professional indemnity policies. However, unlike other Countries where it is mandatory to take up such policies, it is not mandatory for Zambian lawyers to take up professional indemnity policies. Nevertheless, most lawyers in the minutes of the 2009 LAZ AGM felt that there was need for lawyers to take up such insurance policies. Thus efforts are being made by the Law Association of Zambia for the rules of Conduct to be amended in order for professional indemnity policies to be mandatory<sup>7</sup>.

In addition, it was also discovered that unlike in Australia and the Britain where professional associations of lawyers have set up solicitor's indemnity funds, Zambian lawyers have not availed themselves of such an initiative yet.

## **4.2 Recommendations**

The current section will give recommendations based on the research findings from the preceding section. These will be twofold, namely, pre-emptive measures aimed at reducing the occurrence of negligence claims against Zambian lawyers and those aimed at dealing with the complaints once they have occurred.

### **4.2.1. Pre-emptive Measures**

A number a number of measures can be put in place to prevent the occurrence of negligence claims against lawyers. The starting point is at the respective institutions tasked to train lawyers in Zambia. During such training, these trainee lawyers must be equipped with the tools to manage client expectations and professional risk. This involves training on how best a lawyer can maintain a good client –lawyer relationship. Such a good relationship entails that the lawyer explains the expectations clearly, so that there is shared and full

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<sup>7</sup> LAZ AGM Minutes of 2011.

understanding between the lawyer and the client as to all key aspects throughout the engagement. Such key aspects include the fact that the client understands what is important, what the client has to do and what the solicitor will and will not be doing.

During training it must be emphasised, and during actual practice alike, that lawyers should spend time to dig out all the relevant issues and select the best approach in light of those issues. Generally, lawyers need to generally improve their personal attitudes by not becoming preoccupied with the legal aspects of the matter and fail to see that it is just as fundamental to deal with how to deliver the legal service as a whole. Additionally, frequent workshops should be set up by senior legal practitioners with more experience, aimed at instilling proper attitudes in handling client interface to newly qualified lawyers. A good example is the Continuous professional development (CPD) offered by Juris Practice; such programs should be made compulsory for all lawyers<sup>8</sup>.

#### **4.2.2. Post Compliant Measures**

As aforementioned, legal suits against lawyers based on negligence are sometimes inevitable, there is therefore need for *Zambian lawyers* to be equipped in dealing with unnecessary but potentially costly legal suits. In this regard the Rules of Conduct should be amended as soon as possible to make it mandatory for *Zambian lawyers* to take up professional indemnity policies. Thereafter, an indemnity fund should be set up by LAZ to indemnify lawyers who are sued either for being negligent or other civil liability in connection with their practice. Currently there is only the Compensation Fund set up to compensate members of the public due to loss suffered as a result of a lawyer's misconduct.

The Legal Practitioner Committee should continue to discipline negligent solicitors even when the matter is before the court as the two processes are independent of each other.

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<sup>8</sup> Juris Practice Zambia, Courses Offered. <http://www.jurispractice.co.zm>. (accessed on 12<sup>th</sup> April, 2012).

Further, in order to ensure that lawyers country wide adhere to high standards of service delivery, offices should be opened in other provinces other than just having them in Lusaka and the Copperbelt where members of the public can lodge their complaints against negligent legal practitioners. It is also the writer's opinion that cases dealt with by the LPC should not be confidential; it is in the public interest that such information should be easily accessible by the public so that they know which lawyers act with reasonable care and skill and which of them do not.

Also, reform is needed in the legislation as in the Courts and Legal Services Act of England, to confer an express power on the courts in Zambia to make orders of wasted costs against legal representatives who act negligently or as a result of an omission on their part, it would be unfair for the client to meet the whole or part of the legal costs.

For the less sophisticated users of legal services, these must be educated on their right to sue where they feel their lawyer is in breach of duty to act with reasonable care and skill. In this regard, it must be made mandatory for lawyers to explain to the clients his or her rights upon engagement, either in the contract of engagement as well as verbally for those that are illiterate. This will improve service delivery on the part of the lawyer as they will know that they are at risk of being sued because the client is aware of their right to sue in case they breach their duties.

#### **4.3. Conclusion**

The main aim of this Essay was to make an inquiry into the issue of negligence claims against lawyers as well as insurance coverage in Zambia. This essay has considered the various factors that lead to negligence claims and thus established that what exposes lawyers to such claims is failure by the lawyers themselves at the outset to set up a proper relationship with the client, which entails explaining to the client what he is to do and what is expected of

the client throughout the engagement. The Essay also considered the legislative responses to such claims and the conclusion drawn is that though these are reasonably effective in dealing with such claims, more can be done such as inclusion in the laws power on the courts to make wasted costs orders against negligent lawyers.

The importance of insurance coverage in protecting lawyers against potentially but costly legal suits was also considered. It was brought to the fore that such professional indemnity policies are indeed reasonably utilised, however it was recommended that more efforts to amend the Rules of Conduct need to be put in place to make the taking up of such policies mandatory. The Essay finally ended by giving relevant recommendations to help reduce the prevalence of negligence claims against lawyers in Zambia as well as ways of best dealing with such claims once they have been made, in addition to those already in place.

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