



THE REPUBLIC OF UGANDA

# **TRAINING MANUAL FOR FOREST CONTRACTORS**

## **MODULE: CONTRACT MANAGEMENT**

*Commissioned by*  
**SAWLOG PRODUCTION GRANT SCHEME**



**DATE: 25<sup>TH</sup> - 29<sup>TH</sup> JANUARY 2010**

### **CONSULTANT**

**NAMUDDU JANET KATENDE**

LLB (Hons) (Dar), PGDLP (LDC), LLM (MU)  
Advocate, Commissioner for Oaths & Notary Public  
Lecturer, Makerere University Business School  
E-Mail- [janet.namuddu2@gmail.com](mailto:janet.namuddu2@gmail.com)  
Cell Numbers: 256-772-326211/ 256-702-446069

## TABLE OF CONTENTS

<b>1.0 Introduction</b> .....	1
1.1 Definition of Key Words and Phrases .....	1
1.2: 'Contract' as Opposed to 'Agreement' .....	2
<b>2.0: Types of Contracts</b> .....	3
2.1. A valid contract .....	3
2.2 A Void Contract .....	3
2.3. An Illegal Contract. ....	3
2.4. A Voidable Contract.....	3
2.5. An Unenforceable Contract.....	4
2.5.1 Conditional Contracts .....	4
2.5.2 No Consideration .....	5
2.6. A Unilateral Contract .....	5
2.7 Bi-lateral and Multi-lateral Contract .....	5
<b>3.0: Essential Elements of a Valid Contract</b> .....	7
3.1 Agreement or <i>Consensus ad idem</i> .....	7
3.2 Offer .....	8
3.2.1 Characteristics of a lawful offer .....	8
3.2.2 Offers in Various Scenarios .....	9
3.2.3 Termination of an Offer .....	10
3.3 Acceptance .....	11
3.3.1 Rules Governing Acceptance.....	12
3.4 Consideration .....	13
3.4.1 Types of Consideration .....	13
3.4.1.1 Executory Consideration .....	13
3.4.1.2 Executed Consideration.....	14
3.5 Intention to be Legally Bound .....	15
3.5.1 Intention in Commercial Agreements.....	15
3.5.2 Intention in Social and domestic Agreements .....	15
3.6 Capacity to Contract .....	16
3.6.1 Factors Affecting Capacity to Contract .....	16
3.7 Legality of Subject Matter .....	18
3.8 Free Consent.....	19
3.8.1 Factors Affecting Free Consent.....	19
3.8.1.1 Duress or Coercion .....	19
3.8.1.2 Undue Influence.....	19
3.8.1.3 Misrepresentation .....	20
3.8.1.4 Mistake.....	20
<b>4.0 Contract Termination and its Implications</b> .....	23
4.1 Discharge by Performance .....	23
4.1.1 Problems of Partial Performance .....	23
4.2 Discharge by Agreement .....	24

4.3	Discharge by Frustration.....	24
4.4	Discharge by Breach .....	25
4.4.1	Elements of Breach.....	25
4.4.2	Remedies for Breach of Contract.....	25
<b>5.0</b>	<b>The importance of a Formal (written) Contract.....</b>	<b>27</b>
5.1	Form of Contract.....	27
5.2	Terms of the Contract .....	28
<b>6.0</b>	<b>Consequences of Contract Execution and Contract Variation .....</b>	<b>29</b>
6.1	Consequences of Contract Execution .....	29
6.2	The Importance of a Signature or Thumbprint .....	29
6.3	Contract Variation .....	30
<b>7.0</b>	<b>Basics of Contract Management.....</b>	<b>31</b>
7.1	Main Contents of a Forest Management Contract .....	31
7.2:	Contract Negotiation.....	33
7.3	Labour Supervision and Vicarious Liability.....	35
7.3.1	Assumed Knowledge .....	35
7.3.2	Vicarious Liability for Labourers and Sub-contractors.....	35
7.3.3	Different Contracts for Each Staff.....	36
7.4	Valuation and Evaluation of Contract Activities (30 Minutes) .....	37
7.4.1	Assumed Knowledge .....	37
7.4.2	Contract Monitoring and Evaluation of Contract Activities.....	37
7.5	Dispute Resolution.....	37

## 1.0 Introduction (15 Minutes)

Law is a very wide subject. It is a body of rules and regulations that govern a given subject, community or society. When we talk of the law of contract for example, we are referring to the rules that are in place to ensure that the agreements made by people are up to a certain acceptable standard and that once signed or orally agreed upon, these agreements are strictly performed by the parties.

In the proceeding part of this manual, we shall be meeting many technical terms and phrases which are defined as we meet and use them. Some of them however need to be defined right from the beginning in order to get along smoothly and these are defined below.

### 1.1 Definition of Key Words and Phrases (45 minutes)

<b>Contract:</b>	A legally binding agreement.
<b>Binding Agreement:</b>	An agreement which, if not fulfilled, courts can order the party in the wrong to perform his or her part as agreed.
<b>Offeror:</b>	A person who initiates a contract by proposing the terms which he is willing to perform and the ones to be performed by the other.
<b>Offeree:</b>	A person to whom an offer is made or addressed
<b>Acceptor:</b>	A person who accepts to do what the offeror requires.
<b>Case:</b>	A dispute which has been referred to court for a solution.
<b>Prejudice:</b>	A disadvantage or loss
<b>Reciprocal:</b>	Directed by each party towards the other
<b>Fall of the hammer:</b>	An act representing acceptance by the auctioneer of the price stated by the bidders at an auction sale such as banging of the table, ringing of the bell, clapping of the hands or any other agreed manner
<b>Repudiate:</b>	Refuse to perform the contractual terms.
<b>Repudiation:</b>	Refusal to perform the contractual terms.

**Sacrosanct:** Holy. A contract is taken in law to be holy and once concluded, it must not be tampered with by any one including the parties to it unless they have mutually agreed to change it.

### 1.2: 'Contract' as Opposed to 'Agreement' (30 minutes)

A contract is an agreement with legal force. Not all agreements are contracts. To be called a contract, the agreement must be legally binding. This means that the agreement must be enforceable by law. Enforceability means that if the agreement is not performed by either of the parties to it (breached), the innocent party can get the support of the law to have the agreement fulfilled.

An agreement qualifies to be called a contract if it has all the following elements:

1. *Consensus ad idem*;
2. An offer;
3. Acceptance;
4. Consideration;
5. Free Consent;
6. Capacity of the parties to contract;
7. Legality of the Subject matter;
8. Prescribed Form, if any;
9. The terms must be clear and certain; and
10. Intention to be legally bound.

We shall expound them in detail later. Let us first look at the different types of contracts.

## 2.0: Types of Contracts (2 hours)

**2.1. A valid contract:** This is an agreement with all the above elements. Validity means that it is acceptable in law and enforceable.

**2.2 A Void Contract:** A void contract is one which the law regards as not having taken place at all. It is an agreement which is concluded by the parties, they may even perform it but in the eyes of the law, it never exists. It is void *ab initio* - right from the beginning. A void contract is unenforceable. An example of a void contract is an illegal contract.

Since there is no contract at all, no property or benefit can pass under such a contract. If money was paid in pursuance of a void contract, it becomes recoverable. The parties are restored to their original positions. Courts will not enforce a void contract but may assist the parties to be restored to their original positions.

**2.3. An Illegal Contract:** This is an agreement which is prohibited by law. The prohibition could be by statute, public policy or any other known law. To qualify as a contract, an agreement must be made for a lawful consideration and with a lawful object. Where the object or consideration of a contract is unlawful or is contrary to public policy, it will be declared illegal. As a general rule a contract which becomes void for illegality becomes unenforceable by action. An example of an illegal contract is a contract for cutting trees from a forest reserve. This is against public policy.

As a general rule, where a contract is illegal, no suit may be brought for the recovery of any money paid or thing delivered or for compensation for anything done under any such agreement. Loss lies where it has fallen.

**2.4. A Voidable Contract:** This is an agreement which is valid when made but can be disowned (rescinded) by the entitled party to it. It is a contract with full legal force unless and until one of the parties who is entitled to bring it to an end does bring it to an end. The party entitled has an option either to rescind or to affirm the contract.

The right to rescind however has limitations. A party may exercise his right within a reasonable time otherwise the law may estop him or

her from exercising that right. Where the entitled party acquired a benefit under the contract and he cannot return it, then he may not avoid the contract. Moreover, where a third party has acquired rights under a voidable contract, the right to rescind is extinguished (ends).

□ **Example 1:**

*A contract for carrying out forestry plantation activities for a forest owner who is below the age of 18 years. The contract is valid when made but it can be disowned (rescinded) any time before the forest owner attains the age of 18 years or within a reasonable time after attaining the age of 18 (majority age).*

□ **Example 2:**

*A contract for carrying out forestry plantation activities for a forest owner who is mentally unstable or drunk. The contract is valid when made but it can be disowned (rescinded) within a reasonable time after the forest owner has regained sobriety of the mind or ceased suffering from the mental ill-health.*

□ **Example 3:**

*A contract for carrying out forestry plantation activities for a forest owner whose consent is obtained by fraud, misrepresentation or force. The contract is valid when made but it can be disowned (rescinded) within a reasonable time after the forest owner has discovered the fraud or misrepresentation or as soon as the force or threat has ceased to exist. But the fraud, misrepresentation or force should be reported to Police which has authority to arrest the culprit, investigate the matter and prosecute the suspect in courts of law. If it is not reported, it may be hard to prove that it really existed.*

**2.5. An Unenforceable Contract:** There are two types of unenforceable contracts. There are those that are unenforceable because they are invalid, void or illegal. Then there are those which are valid but merely unenforceable. This is a contract which may be valid but cannot be enforced by the law for various reasons. For instance:

**2.5.1. Conditional Contracts:** A contract whose enforceability is conditional upon fulfillment of certain requirements. Failure to comply with a requirement may render the contract, which is otherwise valid, unenforceable.

□ **Example 1:**

*A contract for planting trees subject to prior clearance of the field to the satisfaction of the forest owner. The contract for tree planting may be valid, but it is unenforceable before the clearance portion of the contract.*

□ **Example 2:**

*A contract for tree planting conditional upon obtaining prior consent of the area Forest Management Officer.*

**2.5.2. No Consideration:** A contract where the person seeking to sue did not give consideration for the other's promise or performance.

□ **Example:**

*A contract for planting trees where the forest owner did not promise to pay or did not pay the contractor for his services. The contract for tree planting may be valid, but it is unenforceable for lack of consideration on the forest owner's part.*

Unenforceability of a contract does not render it void (non-existent). It merely means that;

- a. As between the parties to the contract, it remains valid only that they cannot seek assistance from the court unless and until the requirement has been met.
- b. The party or parties, after meeting the requirement or condition may seek the assistance of the court, e.g. after obtaining the required consent;

**2.6. A Unilateral Contract:** - This is a one sided contract. Only one party sets the terms and makes promises or a promise. The other party only accepts and performs the terms set, after which he becomes entitled to the promises made by the other. In unilateral contracts, the offeror does not know who will accept his offer. Secondly, the acceptor need not tell the offeror in advance that he will do what the offeror wants. In other words, performance amounts to acceptance. It is a unilateral contract or one sided because only one party promises. The other does not but merely performs.

**2.7 Bi-lateral and Multi-lateral Contract:** The other types of contracts that are not unilateral are bilateral or multilateral. 'Bi' means two. In a bilateral contract, there are two parties or sides and both get involved in the negotiation and contribution to the terms of the contract. In a multilateral contract, there are more than two parties.

There are many (multi) parties, ranging from three to infinity. If the parties are three (3), the contract is called a tripartite.

**Activity 1:**

Write down one example of each of the above types of contracts and then present one example to the rest of the participants. Be prepared to answer questions from the members.

**Lesson from description and types of contracts-** Before warning the other party that “I will take you to court”, first establish whether your basis is a valid and enforceable contract. If not, spare your time.

### 3.0: Essential Elements of a Valid Contract

#### 3.1: Agreement or *Consensus ad idem* (15 Minutes)

Agreement is essential to any contract. Before there can be a contract, there must be a *consensus ad idem*: that is, a meeting of the minds. All the sides to a contract must understand the same thing in the same manner. If one party understands the subject matter of the contract in a different manner from the other, then there is no *consensus ad idem*. This renders the contract *void ab initio*, right from the beginning.

So, it is very very important that both sides or parties of the contract do establish from the other side whether they have understood the subject matter and the terms of the contract in the same way before they can conclude the contract.

□ **Example:**

*If the contract is about 'land preparation', both the contractor and the forest owner must understand the phrase to mean clearing, lining out, pre-plant spraying and pitting, not otherwise. If the contractor for example understands 'land preparation' to mean bush clearance and pre-plant spraying only, and yet the land owner thinks that the process will involve all the above mentioned activities, then in contract we say that there was no meeting of minds.*

One can establish that the terms of the contract are understood by both parties through repeating the terms for the other party to confirm, reading the terms together, letting the other party to read the terms carefully before signing and stressing the terms in form of questions for the other party to answer.

#### **Activity 2:**

A tree plantation owner is about to hire the services and works of a contractor to manage the forest from land preparation to felling. Two participants should act as owner and contractor and the owner should ensure that the contractor has understood the activities involved in the same way as the plantation owner has understood them.

### 3.2: Offer (1 hour & 45 Minutes)

An offer is the expression of willingness to do or abstain from doing something with a view of obtaining another's consent. The one who offers is called 'offeror' while the one to whom it is made is the 'offeree'. A lawful offer is characterized by the following:

#### 3.2.1 Characteristics of a lawful offer

- a) It must be made willingly- the offeror must be willing to be bound and his decision to make the offer should not be induced by fraud, undue influence, duress, misrepresentation, etc.
- b) The terms must be clear and certain. Any ambiguity or lack of clarity may disqualify the statement from being an offer.
- c) It should be firm and final. Where the offeror keeps on changing the terms of his statement, then in law such statement cannot be regarded as a lawful offer.
- d) It must be communicated. This also presupposes that the communication should be made by the authorized person and in the authorized manner.

The terms of the offer ideally should form the terms of the contract. But in the business world, it may be difficult to tell who made the offer and who accepted it. This is because the offer may be altered by the acceptor and then the altered terms form the basis of the contract. In such a case, we invoke the 'last shot' rule. It is to the effect that he who shoots last becomes the offeror and the other who accepts to be bound by the altered terms becomes the acceptor.

An offer should be differentiated from an "invitation to treat"; that is, an expression of a general intent to enter into a contract and inviting an offer to be made in the proposed terms. The one inviting offers is called 'the invitor' while the one to whom an invitation to treat is made is the 'invitee'.

A good illustration is the display of merchandize at a store with a price tag. The display of the merchandize does not constitute an offer waiting for a customer to walk in and accept it. Rather, it is an invitation to treat by the store owner. The offer is made when the customer presents the merchandize to the cashier and tenders the amount of the price. At that point, the shop attendant is free to accept the offer and sell the item or reject the offer and decline to sell.

**Activity 3: Please indicate whether the following is an offer or an invitation to treat**

a) I hereby hire your services to weed and prune my tree plantation between January 1<sup>st</sup> 2010 and December 31<sup>st</sup> 2010 for Ugx 20 million payable in two equal installments, one at the commencement of the work and another on completion. If you accept this offer, please sign the attached copy of this offer and return it to me not later than close of business today.

Answer: This is .....

b) I would like to hire your services to weed and prune my tree plantation between January 1<sup>st</sup> 2010 and December 31<sup>st</sup> 2010 for Ugx 20 million payable in two equal installments, one at the commencement of the work and another on completion. If you are interested in offering these services, put in your proposal, also indicating the time frames and number of employees that you intend to employ together with their qualifications. This should not be later than close of business tomorrow.

Answer: This is .....

**3.2.2 Offers in Various Scenarios**

- a) **Auction sales:** In a sale by auction, the bidder is the person who makes the offer. The offer is made when he states the price which he is willing to pay for the particular item. Once a higher bid is made, the previous one ceases to have effect. It lapses. This is so even if the higher bidder withdraws his proposal before the fall of the hammer. The one who invites the public for the auction makes an invitation to treat. He in the end becomes the acceptor when he finally accepts the offer. He is not bound to accept the highest bid unless otherwise stated in the invitation.
- b) **Display of goods for sale, Hawkers, etc.**  
The law is that display of goods in shop windows or on shelves in a self-service store even with the price marked, does not amount to an offer. Rather, the intention is to invite persons to come forward and make offers to buy.
- c) **Advertisements on TV, Radio stations & Newspapers / Magazines**  
Some advertisements are offers while others are invitations to treat. One should carefully look at the terms contained. If it is a clear, firm and final

expression of willingness to be bound, it will be an offer. Otherwise, it is an invitation to treat.

### d) **Contracts by tender**

In contracts by tender, offers are made by those tendering. Where a person is invited to tender under certain conditions and he complies, then he acquires a right to have his tender considered along with the other tenders. But this does not mean that the person who invited tenders must accept the tender. The right is limited to the tender being opened and considered.

### **3.2.3 Termination of an Offer**

An offer may be terminated any time before it is accepted. Once an offer has been accepted, a binding contract is formed. Provided an offer has not been accepted, it may be terminated for any of the following reasons or by any of the following events.

**3.2.3.1 Lapse of time:** The offeror may state that the offer will remain open for a specified period of time. In such a case, acceptance must be effected within the time limit. Where there is no time limit on the offer, it expires after a reasonable time. What is reasonable time is a question of fact depending on the circumstances of each case.

In Virji Kimji v Clulterbuck, The offeror ordered for timber from the offeree. There was no reply from the offeree but after 9 and ½ months, the offeree complied with the order. Court decided that such a delay amounted to a lapse of time and that at the time of compliance, the offer had already lapsed.

**3.2.3.2 Revocation:** Revocation means withdrawal of the offer by the offeror. The general rule is that an offer may be revoked at any time before it is accepted. This is the case even where the offer was for a specified period of time, say one month. An offer becomes irrevocable as soon it is accepted.

**3.2.3.3 Death of the parties:** In contracts of a personal nature such as management, performance or modeling, death of either of the parties terminates the offer. Where the offeror dies before the offer is accepted and the offeree is aware of the death, the offer lapses and becomes incapable of acceptance. But death of the parties after acceptance is complete does not affect the offer as a binding contract is already formed.

3.2.3.4 **Failure to fulfill a condition of the offer:** Where an offer is subject to the fulfillment of a condition precedent by the offeree before acceptance, or subsequent after the acceptance, failure to fulfill the condition causes the offer to lapse. Refer to examples 1 and 2 on unenforceable contracts.

3.2.3.5 **Rejection by the offeree:** The rejection of an offer terminates it. Rejection is effective from the time it is communicated to the offeror. It may be express or implied through a counter offer by the offeree. A **counter offer** completely destroys the original offer and the parties immediately change. The counter offeror / original offeree becomes the offeror.

An example of a counter-offer is the case of Hyde v Wrench [1840]. In that case, Wrench on 6<sup>th</sup> June offered to sell an estate to Hide for 1,000 pounds. On 8<sup>th</sup> June, in reply, Hide made an offer of 950 pounds, which was rejected by Wrench on 27<sup>th</sup> June. Finally, on 29<sup>th</sup> June, Hide wrote that he was prepared to pay 1,000 pounds which again Wrench rejected and refused to sell. Hide sued to enforce the sale. Court said that no contract existed between the parties. That the original offer could not be revived after its rejection by the offeree. It was substituted by the counter offer which was also rejected.

<b>QUESTION ANSWER SESSION</b>
--------------------------------

What questions do you have before we proceed?
---

**Lesson from offer-** *Before you start thinking of performance, first establish that there was a valid offer which was accepted. You may render free services.*

### **3.3: Acceptance (45 Minutes)**

Acceptance is simply some indication by the person receiving the offer that he is willing to abide by the terms of the offer as given. The acceptance must be clear and absolute and without conditions attached.

In response to my offer to hire your services to weed and prune my tree plantation, if your response is "That sounds like a good deal", there is no acceptance of the offer and no contract is concluded. If however, you say words to the effect that "we have a deal" or more precisely, "I accept",

then there is a binding contract. If you go ahead to perform the specified services after the acceptance, we have an enforceable contract under which the contractor will be entitled to be paid.

### 3.3.1 Rules Governing Acceptance

1. It must be made or given by the offeree alone, that is, the person to whom the offer was made.
2. It must be absolute or unqualified. That is to say, the offeree must accept the offer as made to him. If the acceptance is conditional or alters the terms of the offer, it ceases to be acceptance and becomes a counter offer to the original proposal. The original offeror would then be free to reject or accept the counter offer. See Hyde VS. Wrench
3. Silence does not amount to acceptance and mere performance without prior acceptance does not give rise to an enforceable contract except in unilateral contracts.
4. If the offeror states that acceptance must be given in a certain manner and by that method only, then acceptance must be given through or by the prescribed mode.
5. It must be communicated to the offeror and the burden is on the acceptor to ensure that communication of the acceptance is effective.
6. The acceptance must be made before the offer has expired. If there is no time limit by which the offer must be accepted, then the law requires that the offer should be left open for a reasonable period of time. What exactly is a reasonable period of time will depend upon the particular circumstances of each case.

**Activity 4: In response to my offer to hire your services to weed and prune my tree plantation, each participant should give a response:-**

a) Which does not amount to an acceptance hence not giving rise a valid contract.

a) Which amounts to acceptance giving rise to a valid contract.

### 3.4: Consideration (1 hour & 45 Minutes)

Consideration is the price paid for another's act or promise in the contract. The law demands that he who gives out value must be given some value in return; nothing should go for nothing; something must go for something - quid pro-quo. It is this consideration that makes the contract binding. Consideration is some benefit or advantage to the person making the offer and a corresponding cost or prejudice to the person accepting the offer.

In a typical contract, both parties must give reciprocal consideration for each other's promise or performance. Each party buys the other's promise with some promise or performance. So, consideration flows from both sides to both sides. A promise which is not bought by some consideration is not enforceable.

□ **Example:**

*Mr. Muzira, the Chairperson of Rukokoma Community in Ibanda District hires the services of Muliisa to weed the Community's pine plantation from March 2009 to December 2009. Muliisa accepts to do the weeding but no payment is promised or given to Muliisa for the weeding. Muliisa does not do the weeding as agreed due to some personal problems. In such a case, Muzira cannot take Muliisa to court because no consideration was given for Muliisa's performance. But if some money or other payment was given or promised to be paid at a specified date or time, then Muliisa would be successfully prosecuted for his failure to fulfill his weeding obligation.*

It is left to the parties to determine whether or not the consideration agreed upon is adequate; only the parties can judge whether or not it is a good bargain. The law only requires that there be sufficient consideration; meaning that something of value must be given by a person who is given some value by another.

#### 3.4.1 Types of Consideration

There are various types of consideration and these are executory, executed and past consideration.

##### 3.4.1.1 Executory Consideration

Consideration for the promise or performance of another is said to be executory if the liability to perform or to give it is outstanding. A contract in respect of forestry activities is a good illustration.

□ **Example:**

*The forest owner and the contractor may conclude a contract by a mere exchange of promises. The forest owner promises to hire certain services and the contractor promises to perform those services. A contract has been concluded. Performance of the contract will take place in future, it is executory, yet to be done.*

**3.4.1.2 Executed Consideration**

On the other hand, **executed consideration** consists of an act which is immediately done in response to a promise, so that there is no outstanding obligation on the part of the party to give consideration.

□ **Example:**

*The forest owner and the contractor conclude a contract. The forest owner promises to hire certain services at an agreed price and the said price is paid at once in a lump sum. In exchange, the contractor promises to perform those services. A contract has been concluded.*

<b>Activity 5:</b>
In the preceding example, whose consideration is executory and whose is executed?

**3.4.1.3 Past Consideration:**

This consists of something that was done or given before a promise was made so that the fresh promise is not supported by fresh consideration. The general rule is that past consideration is unacceptable in law.

**Lesson from consideration-** *Avoid free promises. Buy every promise with a promise or some other price. Free things become very expensive when they are not done as agreed.*

<b>QUESTION ANSWER SESSION</b>
What questions do you have before we can proceed?

### 3.5: Intention to be Legally Bound (30 minutes)

For the parties to conclude a binding contract, they must intend to be legally bound by the contract. The rationale behind this principle is that contracts should not be the spot of an idle hour, mere matters of pleasantry, never intended by the parties to have any serious effect whatsoever.

#### 3.5.1 Intention in Commercial Agreements

In all commercial agreements, there is a presumption that the parties intend legal consequences to follow. If the parties to a commercial or business related agreement do not intend to be legally bound, they should clearly state so in the agreement.

#### 3.5.2 Intention in Social and domestic Agreements

Agreements between husband and wife and close family members are called domestic arrangements. Agreements between friends are legally referred to as social arrangements. There is a presumption that social and domestic arrangements do not give rise to legally enforceable contracts even though they may have outward appearance of contracts. If however the parties to a domestic or social arrangement do intend to be legally bound, they should clearly state so in the agreement

□ **Example:**

*Byaruhanga, a land owner and his son Aine conclude a contract. Byaruhanga promises to hire Aine's services to plant eucalyptus for Byaruhanga on his 1 acre of land. In exchange, the Aine promises to perform those services. However, Aine gets a scholarship to study in South Africa and is unable to do the work. Byaruhanga will find it very hard to successfully sue Aine because court will presume that these being father and son, they did not intend to be legally bound by their agreement.*

**Lesson from intention-** *Avoid contracting with relatives and friend unless it is clearly stated in the contract that the parties intend to be legally bound.*

<b>QUESTION ANSWER SESSION</b>
What questions do you have before we proceed?

### **3.6: Capacity to Contract (1 hour & 30 minutes)**

This refers to competence to conclude a legally binding contract. The law recognizes certain groups of persons as not being capable of contracting and therefore protects them. As a general rule only sane, sober persons of majority age are capable of making valid contracts. Persons who are not competent to contract are minors, persons of unsound mind and those who have been disqualified by the law to which they are subject.

#### **3.6.1 Factors Affecting Capacity to Contract**

##### **3.6.1.1 Age:**

A minor is a person below the age of eighteen. The general rule is that a minor does not have the capacity to contract. However, the law recognizes some contracts with minors as valid and others as voidable.

##### **3.6.1.1.1 Valid Contracts with a Minor**

Firstly, a minor's agreement for purchase of necessities of life such as water, food and clothing is valid and enforceable against him. However, what is or is not a necessity will depend on the condition in life of the minor.

Secondly, a minor may bind himself by a contract of apprenticeship or of service because it is to his advantage that he should acquire means of supporting himself. Each contract of service, however, must be examined as a whole to see whether it is substantially for the benefit of the minor.

##### **3.6.1.1.2 Voidable Contracts with a Minor**

If a minor enters into a contract whose subject matter imposes a continuous obligation, the contract is voidable at the minor's option. This means that the contract is valid unless the minor disowns (repudiates) it during his infancy or within a reasonable time after reaching majority age. Examples of such contracts are leases, having shares in a company, partnership in a firm and marriage contracts.

□ **Example:**

*Asimwe Ateenyi born in January 1992, happens to own land in Kaseese. She gets excited by the commercial tree planting activities in Kaseese and decides to hire the services of Mulimi, a forest contractor to carry out land preparation in consideration of Ugx 20 million. Mulimi agrees and commences the works. However, when*

Mulimi has completed only one stage of bush clearing but before burning, Asimwe changes her mind and says that she is not interested in Mulimi's services any more. It is perfectly in order for Asimwe to avoid the contract since she is a minor. The law only obliges her to pay Mulimi for the work so far done. But if Asimwe was above 18 years, she would be obliged to let Mulimi do the work to completion or else pay compensation for breach of contract.

### 3.6.1.1.3 Void Contracts

If the contract entered into with a minor does not fall under any of the above two categories, it is void and the minor is completely free from liability. Consequently, all the effects of such an agreement must be worked out independently of the contract. An example is a trading contract which is not for supply of necessities.

### 3.6.1.2 Mental State

The sobriety of the mind is very important to concluding a binding contract. Factors that affect mental state are alcoholic drinks, drugs, sickness, stress, age and extreme anger. As such, persons who act under the influence of alcohol and drugs, insanity, imbecility, and senility are incapable of concluding binding contracts. Contracts entered into by such persons are voidable at their option if it can be proved by themselves or on their behalf that they were incapable of understanding the nature of the contract.

### 3.6.1.3 The Ultra-vires Doctrine

A company can only enter into a contract in accordance with its memorandum of association, under the objects clause. A co-corporation can only contract in accordance with the Statute which established it. If a company concludes a contract which is within its objects, such a contract is described as being *intra vires* and is valid. If on the other hand a contract is made outside the objects of the company, it is referred to as being *ultra vires* i.e. beyond the powers of the company to do and it becomes void.

<b>Activity 6:</b>
<b>What lessons have you learned from 'capacity to contract'?</b>

**QUESTION ANSWER SESSION**

What questions do you have before we can proceed?

**3.7: Legality of Subject Matter (30 minutes)**

What is legal is allowed or acceptable in law. Something illegal is one which is prohibited by the law. Parties to a contract are free to agree on whatever terms they please as long as the consideration for the promise and the aim of the contract are lawful or legal.

The most common effect of illegality is to render a contract non-existent and to prevent the enforcement of the contract either wholly or in part. It may also prevent a party who has transferred money or property under the contract from recovering it and may invalidate all related transactions.

□ **Example:**

*Kasigazi employs Brian to stealthily cut trees from Kasese Forest Reserve at night without the knowledge of the authorities for a consideration of Ugshs 2,000,000/=. The object of the agreement is illegal or unlawful. Brian's consideration for Ugshs 2,000,000/= is to cut the trees which is illegal. If Brian cuts the trees as agreed but Kasigazi refuses to pay shs. Ugshs 2,000,000/=: Brian cannot enforce the agreement.*

Some of the contracts that are illegal are:

- i) A contract which is against public policy;
- ii) A contract to commit a crime;
- iii) A contract which is immoral;
- iv) An agreement which affects the freedom or security of marriage;
- v) Agreements in restraint of trade.

**Question:**

**What if a certain activity is prohibited but the contracting parties do not know?**

**Answer:**

Where the contract is prohibited by law, no allowance is made for innocence. Every one is presumed to know the law. Ignorance of the law is no defence.

**Lesson from legality-** *Before concluding a contract, find out if the law allows it. The lawyers can give you a brief on any prohibitions and conditions regarding every subject.*

<b>QUESTION ANSWER SESSION</b>
--------------------------------

What questions do you have before we proceed?
---

### **3.8: Free Consent (2 hours)**

Free consent means that a person must conclude a contract on his own free will while knowing the full facts and consequences of the contract and he should be determined to face the consequences of non-performance. There are certain factors which affect free consent. These are coercion or duress, undue influence, misrepresentation and mistake. Let us begin with coercion.

#### **3.8.1 Factors Affecting Free Consent**

##### **3.8.1.1 Duress or Coercion**

This is the use of force, a threat or pressure with the intention of causing a person to enter into an agreement. When the consent of a person to contract is obtained by coercion, the contract is *voidable* at the option of the party whose consent was so caused. If not avoided, it remains valid and enforceable.

##### **3.8.1.2 Undue Influence**

Undue influence involves the improper use of power by a person in a superior or advantaged position to affect somebody's decision to consent to contract. The requisite to prove undue influence are:-

- a. One of the parties must be in a position to dominate the will of the other; and
- b. He must have used that position to obtain unfair advantage.

The person who has authority over the other has power to take steps or make decisions which directly affect the person under his charge. The one in authority can use his or her position or power to influence the will of the other and induce him or her to enter into a contract which is unfavorable.

### □ **Example**

*Munene Munene, a Forest Supervisor in Mubende is approached by Prossy Tumushabe, a tree planter to have her plantation supervised. Munene Munene promises to go and supervise Prossy's plantation in the near future. Munene later calls Prossy and asks her if she can sell to Munene Munene only one acre out of her 23 acres of land. Munene insists that if Prossy wants a good report written about her plantation, she has to strongly consider the proposed sell. Munene Munene is in position to dominate Prossy's will and is using his position to obtain unfair advantage over Prossy.*

In order to determine the respective bargaining positions of the parties, the courts will look at the nature of the relationship, age, illiteracy level, emotional state and income level. A contract entered into by a person who is under undue influence is voidable at his option. If not avoided, such a contract remains binding and enforceable.

### 3.8.1.3 **Misrepresentation**

Misrepresentation means misstatement of a fact material to the contract. Before a contract is made, parties make statements in the course of negotiations. Some of the statements form part of the contract and these are called terms of the contract. Others do not and these are known as representations. They are pre-contractual statements. They are made to induce a party to enter into a contract. Some may be untrue while others may be true. The untrue ones are called misrepresentations.

There are two type of misrepresentations namely, innocent misrepresentation and fraudulent or intentional misrepresentation. Innocent misrepresentation is an untrue representation although the maker believes it to be true. Fraudulent misrepresentation is made by a party who knows that what he represents is not true.

The general effect of a misrepresentation is that the contract is voidable at the option of the injured party. If the consent of a party to a contract is induced by misrepresentation, the innocent party may affirm the contract and sue for damages for deceit, he may rescind the contract without damages or he may repudiate (disown) it and recover any money paid.

### 3.8.1.4 **Mistake**

This is the misapprehension or misunderstanding of facts which are material to the contract by both or one of the parties to the contract.

#### 3.8.1.4.1 Types of Mistake

There are three major types of mistakes: mutual, common and unilateral mistake.

3.8.1.4.1.1 **Mutual mistake** is where the contracting parties are at such crossroads or cross-purposes that there is no agreement between them. Each one understands the contract to refer to something different from what the other thinks.

□ **Example**

*Kangaru, a contractor agrees to start a nursery for Byoyabyanswa, the land owner at an agreed price. However, the contractor understands 'nursery' in this sense to mean a nursery bed while the land owner is referring to a nursery school. Both parties are mistaken as to what the contract is about. There is no consensus ad idem, the meeting of minds.*

3.8.1.4.1.2 **Common mistake** is where the parties to the contract make the same mistake about say possibility of performance or existence of the subject matter.

□ **Example**

*Kangaru, a contractor agrees to carry out blanking and filling for Byoyabyanswa in Byoyabyanswa's msizi plantation in Nyakasozi but unknown to the parties, the entire plantation has been destroyed by cows which have eaten up most young trees and trampled upon the others.*

Common and mutual mistake render the contract void. In the case of Galloway v Galloway [1914], a separation deed between a man and a woman who mistakenly thought that they were married to each other was held to be void because it sought to deal with a marriage which did not exist.

3.8.1.4.1.3 **Unilateral mistake occurs** where only one of the parties is mistaken about a material fact relating to the contract. The other is not. It renders a contract voidable at the option of the mistaken party.

**Activity 7:**

a) What are the common factors affecting free consent that you encounter in your field?

b) How exactly is one supposed to avoid or repudiate a contract where his consent has been vitiated or affected by the above factors?

**Lessons from free consent-** *If your consent to contract is procured by mistake, undue influence or misrepresentation, avoid or disown the contract as soon as possible otherwise, delay may be taken as affirmation.*

**QUESTION ANSWER SESSION**

What questions do you have before we proceed?

## **4.0: Contract Termination and its Implications (2 hours)**

Contract termination is technically referred to as discharge of contract. This is putting the rights and obligations under a contract to an end. A contract can be ended by agreement, performance, breach and frustration.

### **4.1 Discharge by Performance**

Here, both parties to the contract perform their duties or obligations under the contract. The guiding rules are:

If a contract is discharged by performance, such performance should be complete, that is, as agreed. Partial performance is no performance at all.

#### **4.1.1 Problems of Partial Performance**

In law, one who performs a contract partly is not entitled to recover the agreed fee. There are exceptions to this rule. These are:

##### **4.1.1.1. *Divisible /Severable Contracts***

Where there are different and separate pieces of work to be done under one contract, one who completes one piece but fails to do the other parts can be paid for that part which he has completed. An example is a forest management contract.

If the contractor agreed to do land preparation, planting, beating up and thinning but only does the land preparation and stops there, he is entitled to payment for land preparation. The land owner can then engage another contractor to do the other part.

**4.1.1.2 *Acceptance of partial performance*** by the innocent party is another exception which settles the question of partial performance by agreement. This waives the wronged party's right to insist on the doctrine of partial performance.

##### **4.1.1.3. *Non-completion due to the hirer's fault***

If non completion of the contracted works is due to hirer's fault such as refusal to pay as agreed or to provide some materials such as the seeds or

seedlings, the works or service contractor can claim for payment for the work so far done.

**4.1.1.4 Substantial performance** – This refers to performance to a great extent. A person who has substantially performed his part of the bargain is entitled to sue and claim for full payment if he is not blameworthy, or for payment for work done.

<b>QUESTION ANSWER SESSION</b>
--------------------------------

What questions do you have before we proceed?
---

## **4.2 Discharge by Agreement**

An agreement to put the rights and duties of the parties to an end is sufficient to end the contract. This agreement must however be written otherwise it may be denied by one party in future. Such agreement may either vary the original one so that it is performed differently or it may totally extinguish the contractual relationship between the parties.

## **4.3 Discharge by Frustration**

Frustration is where the performance of a contract is made impossible by the happening of some unexpected event without the fault of either party. An example is where performance of the contract is made illegal, destruction of subject matter by a calamity, death or incapacity of the parties (only in personal contracts e.g. employment and works contracts), unavailability of the subject matter, governmental or statutory intervention etc.

The effect of frustration is complete termination of the contract. The rights that had accrued before the frustrating event occurred remain enforceable while those rights that had not yet accrued at the time of frustration remain unenforceable. However, difficulty in performance is not frustration.

If a contract becomes difficult to perform, the one finding it difficult to perform is duty bound to sit the other party down and discuss what has changed since the contract was concluded. This should result into contract variation by agreement. Mere abandoning of the contractual duties amounts to breach of contract.

**Activity 8:**

USUFOPS (U) LTD, the forest contractor agrees with Bogere to plant 1,000 eucalyptus trees on Bogere's farm. Akello is responsible for supplying the seeds, making the nursery bed, planting and beating up. Unfortunately, due to the credit crunch, the labour charges and seed prices shoot up which means that the agreed consideration for Akello's works is not sufficient.

**Questions:**

1. Does the above situation amount to frustration of contract? Defend your answer.
2. What advice do you give to Akello in the circumstances?

#### **4.4 Discharge by Breach**

Breach of contract is failure to fulfil the terms of the contract. It may take different forms as outlined below:

##### 4.4.1. Elements of Breach of contract

Each of the following conduct amounts to breach of contract: It is where one of the parties to the contract:-

1. Fails or refuses to perform the contract as agreed;
2. Performs the contract defectively;
3. Incapacitates himself from performing the contract without lawful excuse.

##### 4.4.2 Remedies for Breach of Contract

Breach of contract entitles the aggrieved party to any or a combination of the following remedies or solutions:

- a) Refusal of further performance;
- b) Compensation for the damage suffered- the wronged party is under duty to minimize or mitigate the damage;
- c) *Quantum meruit*- seeking for payment for the work done before the breach;

- d) Specific performance of the contract by the breaching party;
- e) Injunction- a court order stopping a party from breaching the contract;
- f) Restitution – restoring the innocent party to his original position.

<b>QUESTION ANSWER SESSION</b>
--------------------------------

What questions do you have before we proceed?
---

**Lessons from contract termination-** Before you point a finger at the non performance of the other party, first examine your own conduct. If you are also in breach, fulfill your obligations first. He who seeks justice must do justice.

## **5.0 The importance of a Formal (written) Contract**

### **5.1. Form of Contract (30 minutes)**

The general rule is that no formality is needed in making a contract. An oral contract is as effective as a written one. There is no requirement that a contract must be in writing except in certain special situations such as an employment contract.

The problem is that if the verbal exchanges of the parties are to be relied upon, it may be very difficult and in some cases impossible to determine precisely the terms of the contract if there is in fact a contract. If the court cannot with reasonable certainty determine the terms that the parties have agreed to, the court cannot enforce the alleged contract. It is for this reason that it is wise to have a contract in writing although writing itself is no assurance that the alleged contract is clear and precise.

However, there are certain contracts which require a particular form otherwise they are unenforceable. For instance, there are some contracts which must be in writing: These are:

- a) An agreement to transfer of shares in registered companies (Companies Act);
- b) Assignments of debts and other contractual rights;
- c) Contracts of marine insurance (Marine Insurance Act);
- d) A contract of employment (Employment Act);
- e) A contract of guarantee (Contract Act).

A written contract can only be varied by a subsequent written agreement. Oral agreements cannot vary written contracts. An oral variation leaves the written contract intact and enforceable.

<b>QUESTION ANSWER SESSION</b>
a) What questions do you have before we can proceed?
b) What lessons have you learnt from 'form of contract'?

## 5.2: Terms of the Contract (30 minutes)

The terms of a contract define the rights and duties of the parties arising under the contract. Terms of the contract are what the parties have agreed to do under the contract. These terms may be express or implied. Express terms are those, which the parties clearly or expressly agree upon. These may be oral written or partly oral and partly in writing.

If the contract is wholly in writing, it is for the court to interpret the meaning of the agreement. But as a general rule, the parties are confined within the four corners of the document and oral explanations cannot be allowed to add to or vary the written terms. This is what is referred to as the parole evidence rule.

If the contract is oral, its terms are a matter of evidence. It is the offeror's word against the offeree's. Every one, including the parties, will find it difficult if not impossible, to recollect exactly what it was that the parties said. After finding out what was said, it may again be difficult to ascertain the meaning of what was said according to the parties.

That is why it is very very important that the terms of the contract be clearly written in order to avoid disagreements in future. If the terms of the contract are so vague (ambiguous or unclear) that no common intention of the parties can be gathered, the contract will be void for uncertainty.

Implied terms are made part of the contract by dictation of the law and trade customs. The parties do not have to write them down. They are part of the contract because the law says so. If the parties do not wish implied terms to be part of their contract, they should exclude them expressly.

*Note: See annex A: Sample Plantation Agreement for details.*

**Activity 9: What terms are implied in every contract for tree planting?**

### Lessons from 'terms'

1. The law is not your mother or father to think for you. What you, as parties, want to be done is what you should include in the terms of the contract;
2. Always put all the terms of the contract in writing. Even the faintest ink is better than the strongest memory.

**QUESTION ANSWER SESSION**

What questions do you have before we proceed?

## **6.0 Consequences of Contract Execution and Contract Variation**

### **6.1: Consequences of Contract Execution (1 hour)**

A contract which is concluded by the free consent of the parties, unless it is contrary to law or public policy, is sacrosanct -holy. It should not be changed but must be performed. In fact, any person who deliberately disables another person from performing his contractual obligations to another commits a wrong known as 'inducing breach of contract' and is liable to pay compensation to the wronged party.

The state allows parties to make law (contract) for themselves provided they do so within the prescribed limits. They should neither infringe the laws of the land nor go against public policy. Once private persons have made a binding contract, the state will protect their legal interests by enforcing the same through courts of law.

### **6.2 The Importance of a Signature or Thumbprint:**

Once a person signs a contract, it becomes binding upon him or her even where he did not read the contract or some of its parts. In the case of L'Estrange vs F. Graucob Ltd. [1934], a lady bought an automatic cigarette vending machine. She signed but did not read the sale agreement which contained an exemption clause in regrettably small print. It was held that she was bound by the exemption clause.

It is immaterial that the person who signed the contract is illiterate or cannot understand the contents of the document which he signed. The law tries to instill a sense of responsibility in people. If a person does not understand the nature of the document which he is about to sign, he has a duty to seek its interpretation into a language that he understands. If the interpreter misinforms the illiterate or blind person, that can be understood by the law and the disadvantaged person will be excused from the commitments he made ignorantly.

But if a person signs a contract carelessly or negligently without caring to know what its contents are, he will be bound by its terms and the law will apply to him with full force.

<b>QUESTION ANSWER SESSION</b>
--------------------------------

What implications does this have for forest contractors?
--

**Lesson from 'contract execution'**- Endorse a contract only if you know its contents. A clear understanding of the contract terms means almost 20% of the work done. You rather miss the deal than ending up in prison.

### **6.3: Contract Variation (30 minutes)**

This involves an alteration of contractual obligations by the mutual agreement of the parties. As a rule of thumb, a contract which is required to be in writing can only be varied by a written agreement.

The variation of minor terms of the contract is referred to as a waiver. Here the parties agree to relax the terms of the contract as far as time or mode of performance is concerned. The contract remains intact but one party waives his right to insist on time and mode of performance.

It is important to note that no new terms can be introduced in the contract unless they are again agreed upon by all the concerned parties. By a person adding a term to the contract which is not mutually agreed upon, it amounts to a completely new contract or unilateral contract variation which is legally unacceptable.

**Lesson from 'contract variation'**- Things might change at the time of contract implementation. This is normal in forestry works as they depend on climate. Ensure that variation provisions are incorporated into the contract and that actual variation is mutually agreed upon.

<b>QUESTION ANSWER SESSION</b>
--------------------------------

What questions do you have before we proceed?
---

## 7.0 Basics of Contract Management (1 hour)

Contract management or contract administration is the management of a contract entered into with a client. It includes negotiating the terms and conditions of the contract and ensuring compliance with the terms and conditions, as well as documenting and agreeing any changes that may arise during its implementation or execution. It can be summarized as the process of systematically and efficiently managing contract creating, execution, and analysis for the purpose of maximizing financial and operational performance and minimizing risk.

### 7.1 Main Contents of a Forest Management Contract

These parts can be classified as the who, what, when, for how long, for how much, and for what reason. Let us look at them in detail.

**Who:** This section outlines who is entering into the contract (the parties, ie the contractor and forest owner), the number and qualifications, (if any) of the personnel or support staff involved in the activity and the responsibilities of the parties to the contract (who is to do what). It may also entail the roles of the forest investor and those of the contractor.

**What:** The “what” outlines what is to be done under the contract. What is the deliverable or the thing for which the parties are contracting? The more specific the parties are on what is to be done as a result of the contract, the better the contract. This is one of the key areas that has to be negotiated around, trying to make sure that the “what” is as clear as possible.

It is important for the parties to know very well what exactly they are contracting in respect of. In forestry activities, the contractor should make a sight visit to know the terrain and distance of the field from the road before agreeing on the contractual terms.

The most important role of the client is to provide the financial and material requirements needed for starting and completing the silvicultural operations on time. The method of disbursement of the money to the contractor should be agreed upon depending on the financial strength of the contractor and the forest investor.

**When:** The when element helps to consider when the works or services will be completed. The parties may also want to put interim steps, called milestones, into the contract. Milestones in a contract might be the dates that the severable parts of the contract will have to be completed such as land preparation, tree planting and filling, pruning and post plant spraying. Parties may include the date that payment will occur.

This element helps the parties to know how long the contract is in place. Will it be over once the land is prepared to the owner’s satisfaction or after the trees are planted? Or will the contractor continue managing the tree plantation till the trees are harvested? Will the parties review the terms of the contract each year or every five years? These are key questions to answer in negotiating contract management terms.

In order for this part of the contract to be clear, a daily, weekly or monthly activity calendar should be made out linking each activity to a certain period. Table 1 below illustrates how an activity calendar could be.

**TABLE 1: ACTIVITY CALENDAR**

No.	Activity	Period in Months						
		JAN	FEB	MAR	APR	MAY	JUN	JUL
1	Site survey							
2	Species selection							
3	Seed purchase							
4	Nursery preparation							
5	Seed sowing							
6	Clearing land							
7	Lining out							
8	Pitting							
9	Pre-plant weed spray							
10	Planting							
11	Timely weeding							
12	Fire protection							
13	Animal protection							
14	Pest/disease control							

**How:** The how element refers to the acceptable standards of doing each activity because the contracted works should conform to an agreed standard. This standard should clearly be stated in the contract and properly understood by the parties. See Annex B (Table 2) for commonly contracted commercial forestry activities and SPGS recommended standards.

**For How Much:** This is another key element in the contract negotiation process, and one that may take the most time. The negotiations may involve many detailed questions. Is the forest investor paying for portions or pieces of works completed or for pieces of works completed or a lump sum? Will the amount be able to be changed if materials and labour charges go up? What will the forest investor not pay for in this contract?

Here there is need for the contractor to educate the forest investor on the nature and cost of the forestry activities because the forest investors may not know at times what exactly is involved. They may be negotiating from an uninformed position. It is the contractor who actually knows what he/she/it is going to do, how and what it takes to do it.

Forest contractors should emphasize to the forest investor the cumulative cash flow build up of the contracted activities which depends on the area to be planted. Some forest investors may rush to enlarge the area to be planted but eventually fail to maintain the forest due to the falling cash flow. That is why they need guidance from the contractor.

**For What Reason:** Beyond what is to be produced, why is the contractor entering into this particular contract? While this may seem to be irrelevant (because you just need the money for contracting) knowing the why can keep both parties focused on a bigger picture outside of the contract. For example, it helps the contractor to answer the question as to whether he wants forest contracting to be his business or a one time activity.

### **7.2: Contract Negotiation (30 Minutes)**

Unlike toddlers who negotiate by crying and rolling around on the floor, adults need to employ a different skill set to get their point across. The following are some tips for successful negotiation.

1. Before the meeting be well rested and well fed. Also visit the restroom before “entering the arena” as you don’t want a nature call to have you leave the room or adjourn the meeting early.
2. Wear comfortable, yet appropriate clothing. The commercial expression “don’t let them see you sweat” is never more applicable. A tight collar, tie or skirt that is being hitched or hiked that will cause you to fidget will detract from your image.

3. Focus on issues, not personalities- if you have to deal with persons you don't like (or those you do like) it is tempting to let your thoughts about that person influence your behavior. Focusing on your goal and treating everyone as an equal will help matters become resolved in your favor. By treating all fairly you will avoid simmering about grudges or worrying about feelings, which can be an obstacle in your success.
4. Speak in supportive statements- Attach credibility to your statements by speaking in facts not feelings. Avoid sentences beginning with "I think" "I feel" or "In my opinion". When stating facts, be prepared to quote your sources and elaborate or change the direction of questions meant to negatively affect your position. Being armed with facts stands up better than trying to justify feelings.
5. Listen (with more than your ears)- Listen for audible content but also watch the body language. Are your opponents sitting with an "open" body posture or are their arms tightly folded across their chest? Are they scratching their nose often in disbelief? Are they looking down or are they engaging you with their eyes in a game of "blink" to establish who is boss?
6. Find points of agreement to build on. Pick up points that you agree upon and incorporate them into your presentation. An example would be "I agree with you on the importance of burning, and this is how the implementation pre-plant spraying can incorporate the benefits of burning".
7. Choose your battles wisely and place some "decoy" items on the table. A trick popular with lawyers is to ask for much more than they want so that they can "sacrifice" superfluous or unreasonable items to gain ground for the important issues. Compromise with care on items important to you. Weigh carefully whether holding out will be in your best interest. Sometimes a speedy resolution is not the best.
8. Take minutes- Have someone tape or take minutes so that all that has been said is recorded. Reiterate what your responsibility will be and assure the other party that you will execute your part right away. You can end by saying "I will have this in a memo to distribute this afternoon" or "I will make the necessary phone calls to get this rolling right away".

If contracts are involved, have them ready on the spot or as soon as possible to get a signature to what has been agreed. Although most contracts have a "cooling off" period of three days or so, getting a

written commitment to your settlement brings you that much closer to your goal.

9. End on a positive note - Shake hands and smile. A smile shows friendliness and confidence and that you are a great person to do business with, even if everyone in the room was not altogether pleased with the outcome. Conversely, if you did not get all you wanted, do not appear a bad sport. Focus on your "wins" and play down the losses.
10. Take honest notes to yourself on your tactics and see how you can improve for next time.

### QUESTION ANSWER SESSION

What questions do you have before we proceed?

**Activity 10:** The participants should divide themselves into groups of 4 (assumed to comprise of two contractors and two forest contractors) who should demonstrate to the rest of the participants the negotiation skills acquired in the preceding session.

## 7.3 Labour Supervision and Vicarious Liability (30 Minutes)

### 7.3.1 Assumed Knowledge

Here the participants are assumed to have attended the Labour Management Training Module of the SPGS where issues of labour management were covered in detail. What needs to be emphasized is that both the contractor and the forest investor should visit the field frequently to ensure that the workers are doing the right thing and in the right manner.

### 7.3.2 Vicarious Liability for Labourers and Sub-contractors

The contractor should know that the acts and omissions of his staff and sub-contractors are taken by the law to be the contractor's own acts and omissions. The forest investor may take the contractor to court (sue) over acts done by the labourers employed by the contractor or the sub-contractor engaged by the contractor.

### **7.3.3 Different Contracts for Each Staff**

A contractor enters into separate contracts with each and every staff that he employs to help the contractor fulfill his contractual obligations to the forest investor. It is therefore highly recommended that the contractor signs separate contracts with each labourer and sub-contractor in respect of the works and services agreed to be carried out by each individual. This helps to clearly state the roles of the labourers and the contractor and it also helps to eliminate disputes that may arise in carrying out the contracted activities.

## **7.4 Valuation and Evaluation of Contract Activities (30 Minutes)**

### **7.4.1 Assumed Knowledge**

Here the participants are assumed to have attended the Business Skills Management Training Module of the SPGS where issues of valuation or costing of contract activities were covered in detail.

In summary, the contractor should, before signing the forest management contract, list down all the activities involved in a particular silvicultural operation and make a fair estimate of all the costs involved before agreeing on a certain sum with the forest investor.

For example, if the operation is to involve Land Clearing, the contractor should include the following in his charges:

- Transport of the workers to and from the site;
- Supervision or administration fees or charges;
- Actual payment for the labour (to workers);
- Depreciation charges in respect of tools and equipment;
- Local community corporate responsibility such as payment to L.C.1. officials, police and Defence units;
- Telephone and other communication charges; and
- Professional fees/payment to the contractor for the management job.

### **7.4.2 Contract Monitoring and Evaluation of Contract Activities**

Contract management requires that the contractor actually watches and periodically checks the contract to see that it is properly and strictly implemented so that he or she can make the necessary changes in time. It is very important for the contractor to have a copy of the management contract in his hand while supervising and checking the works to see that the terms of the contract are followed to the letter, both by the labourers and the sub-contractors. Failure to strictly monitor the contracted activities may cause breach of contract brought about by minor changes which the contractor thought were negligible.

## **7.5 Dispute Resolution**

A dispute is a conflict or disagreement. Occurrence of disputes cannot completely be eliminated but it can be minimized. There should always be a clause in the management contract of how disagreements between the

parties will be solved. Is it by arbitration or by court action? Arbitration is where a dispute is referred to a neutral person agreed upon by the parties. The decision of the arbitrator is usually final. This means that the parties cannot take the disagreement to court after the arbitrator has made a decision on it.

Taking a dispute to court is referred to as 'suing'. A dispute that is before court is called a suit. Suing should be the last resort after all avenues of amicable settlement have been exhausted. This is because court cases take a fairly long time, between 1 to 10 years, to be completed. And yet, the parties are not sure which way the case will end. If a party loses the case, he or she may wish to appeal to a higher court which may also consume another period of between 1 to 5 years before it can come to an end. A further appeal to yet another court cannot also be ruled out.

Needless to say, a court case is expensive because of the necessity to hire a lawyer, transporting the parties and their witnesses and at times accommodation and subsistence if it is handled in a distant court. The worst part of a court case is that it leaves the parties to it torn apart as enemies. This is not the likely consequence of an amicable resolution which ends in a win-win situation. In all, it is highly recommended that the contractor and forest investor agree on the mode of settling their disputes right from the start. It should also be stipulated in the contract that the parties shall first try amicable means of dispute settlement before resorting to court.

**Activity 10:** The participants should come up with a list of the disputes that are likely to arise and propose ways of amicably resolving them

**ANNEX A: SAMPLE PLANTATION AGREEMENT**

**THE REPUBLIC OF UGANDA  
IN THE MATTER OF THE CONTRACT ACT  
AGREEMENT FOR PROVISION OF SILVICULTURAL OPERATIONS**

This Agreement made the ..... day of ..... 20....

**BETWEEN**

..... of ....., P. O. Box ....., ....., Uganda (To be known as "The Contractor" in this agreement) of the one part;

**AND**

..... of ..... P. O. Box ....., ....., Uganda (hereinafter called "The Forest Investor") of the other part.

**WHEREAS:**

1. The Contractor is engaged in the business of providing silvicultural works and services; and
2. The forest Investor now desires to hire the Contractor's services on the terms contained herein and the Contractor has accepted to offer the same;

**NOW THIS AGREEMENT WITNESSETH as follows:**

**1. COMMENCEMENT DATE AND DURATION:**

- a) The Commencement Date of the agreement shall be .....
- b) The agreement shall subsist for the entire period of completing the agreed works and services.

**2. SCOPE AND STANDARD OF WORKS AND SERVICES**

The Contractor undertakes to provide the silvicultural services and works that are ticked in the Application for provision of silvicultural works and services made by the Forest Investor to the Contractor dated ..... and Appendix A to this Agreement strictly in accordance with the agreed recommended standards such as those specified in Appendix A to this Agreement.

3. **PERIOD OF COMPLETION OF WORKS:** The Contractor undertakes to execute the agreed works and services as per a time period illustrated on the activity calendar below:

**TABLE 1: ACTIVITY CALENDAR**

No.	Activity	Period in Months					
		Jan	Feb	Mar	Apr	May	Jun
1	Site survey						
2	Species selection						
3	Seed purchase						
4	Nursery preparation						
5	Seed sowing						
6	Clearing land						
7	Lining out						
8	Pitting						
9	Pre-plant weed spray						
10	Planting						
11	Timely weeding						
12	Fire protection						
13	Animal protection						
14	Pest/disease control						

**4. CONSIDERATION AND TERMS OF PAYMENT**

- a) In consideration for the services to be rendered by the Contractor, the Forest Investor undertakes to pay the Contractor a total sum of Uganda Shillings ..... to cover the works and services agreed upon in this Agreement.
- b) **The above total sum shall cover the following:**
  - i) Professional Fees
  - ii) Labour Costs such as:
    - Transportation of labour
    - Welfare and safety
    - Salaries and Wages
    - Accommodation
    - Feeding
    - Recruitment and Motivation
  - iii) Capital investment
    - Tools and equipment
    - Financing
    - Depreciation
  - iv) Others
    - Fees to Police and Local leaders
    - Communication expenses
    - Security

- c) The said sum shall be paid to the Contractor in accordance with the Payment Schedule below:

**TABLE 2: PAYMENT SCHEDULE FOR THE AGREED ACTIVITIES**

<b>Payment</b>	<b>Due date</b>	<b>Amount</b>	<b>Mode (e.g. Cash, EFT or cheque)</b>
30% deposit before commencement of the contract			
2 <sup>nd</sup> Installment			
3 <sup>rd</sup> Installment			
Total payable			

- d) For the other activities outside the Agreed Schedule, the parties shall mutually agree upon the fees on a case to case basis prior to the Contractor executing them, taking into account the volume of work, value of the subject matter, the time requirements and the cost of the labour required to accomplish the contracted works.
- e) The above sums shall be exclusive of the Value Added Tax (VAT) and Withholding Tax thereon.

**5. PENALTY FOR LATE PAYMENT OR COMPLETION OF WORKS**

A penalty of 10% per month will either be added to the outstanding amount payable by the forest investor or be deducted from the outstanding amount due to the Contractor where, without prior agreement between the parties, the defaulting party:-

- (1) Either delays in completing the works i.e. executes the works beyond the time indicated in the Activity Calendar; or
- (2) Effects payment outside the agreed Payment Schedule.

**6. FOREST INVESTOR'S DUTIES**

- a) The Forest Investor shall provide all the financial and material requirements necessary for procuring seedlings, ground preparation and planting, and other logistics as shall be necessary to enable the contractor to complete this contract.
- b) The Forest Investor shall take all precautions to prevent unnecessary damage of the plantation arising out of the operations of his adjacent community members, his servants, or agents and shall be responsible for the acts.
- c) The Forest Investor shall be liable to re-imburse the Contractor the reasonable costs incurred in executing the Land Owner's instructions outside the agreed activities;

**7. CONTRACTOR'S DUTY OF SKILL AND CARE**

The Contractor shall provide his/her/its service to the best of his/her/its skill and ability and shall perform all works and services diligently to ensure that the Forest Investor's trees are grown and maintained to the recommended standards such as those provided by SPGS and the National Forestry Authority.

**8. FORCE-MAJEURE**

In the event that the performance or further performance of this agreement is made impossible by the happening of an event that can neither be anticipated nor controlled by the parties or any of them such as climate change, floods, hurricanes, riots, strikes and wars, this agreement shall stand terminated and each party shall be discharged of his/its/her outstanding obligations.

**9. VARIATION**

This agreement shall not be amended or otherwise varied except by a supplemental written agreement executed by all the parties hereto.

**10. DISPUTE RESOLUTION:** Any dispute, controversy or claim arising out of or relating to this agreement, or the breach, or invalidity thereof shall be resolved amicably by the parties themselves or through mediation by a mutually agreeable person(s) before resorting to court action.

**11. AGREEMENT**

All the foregoing terms have been mutually agreed upon by the parties hereto and the parties hereby jointly and severally undertake to execute such further instruments and/or to perform such further or other acts and/or deeds which are or may become necessary to effectuate these presents.

**12. REPRESENTATIVES:** For purposes of the proper administration of this agreement, the Land Owner's representative shall be .....  
whereas the Contractor's representative shall be .....

**IN WITNESS** whereof the parties have hereto have caused this Agreement to be executed the day and year first before written in the manner required by their respective constitutions and the laws of Uganda.

Signature.....  
**For and on behalf of the Contractor**

Signature:.....  
**For and on behalf of the Forest Investor**

Name: .....

Name: .....

Position: .....

Position: .....

Date: .....

Date: .....

Place: .....

Place: .....

**ANNEX B: TABLE 2: DRAFT SPGS PLANTATION STANDARDS**

No.	Plantation Activity	SPGS' Standards / Supervisor's Check-List
<b>SILVICULTURAL STANDARDS</b>		
01	Plantation planning	<ul style="list-style-type: none"> <li>■ Budget and plan at least a year in advance.</li> <li>■ Carry out site survey, species selection and seed/seedling purchase.</li> <li>■ Resource mobilization (get land, capital, train workers etc).</li> <li>■ Draw up a forest management plan.</li> </ul>
02	Nursery preparation & seed sowing	<ul style="list-style-type: none"> <li>■ Use SPGS recommended seed sources</li> <li>■ Ensure people working in the nursery are skilled for their tasks.</li> <li>■ Prepare nursery at least 6 months prior to planting.</li> <li>■ Sow seed allowing 4 months (pines) or 3 months (<i>Eucalyptus grandis</i>) prior to planting time.</li> <li>■ Ensure good nursery hygiene &amp; record keeping.</li> </ul>
03	Land clearing	<ul style="list-style-type: none"> <li>■ Ensure all vegetation is cut low (no more than 15cm), then chopped, heaped and (where necessary) burnt in a safe manner.</li> <li>■ All other vegetation (e.g. grass) must be slashed close to ground level to ease next operations like lining out.</li> <li>■ Timing of clearing is important so that the site is ready for pitting and (where necessary) pre-plant spraying as the rains settle in.</li> </ul>
04	Lining out & Pitting	<ul style="list-style-type: none"> <li>■ Pits should be aligned in straight lines on flat or gently sloping land or following the contours on steep hills (&gt;20° slope).</li> <li>■ Pitting is completed early in the last month to end of dry season</li> <li>■ Pits must be cultivated at the chosen spacing (often 3m x 3m).</li> <li>■ Pits should be circular - 25cm deep and 25cm diameter.</li> <li>■ The 1 meter diameter spot around each pit must be clear of vegetation.</li> </ul>
05	Pre-plant weed control	<ul style="list-style-type: none"> <li>■ Seedlings must not be planted into a weedy site.</li> <li>■ Control weeds before planting where necessary – especially where aggressive grasses are expected to grow e.g. spear grass.</li> <li>■ Pre-plant spraying with Glyphosate is often the most cost-effective method but must be carried out by well trained people.</li> </ul>

## Contract Management

06	Seedling quality	<ul style="list-style-type: none"> <li>■ Plant only healthy seedlings (discard diseased or weak seedlings).</li> <li>■ Plant only seedlings 15-25 cm tall (measured from root collar).</li> <li>■ Over-mature and immature seedlings should be discarded.</li> <li>■ Recommended shoot : root ratio is 2:1</li> </ul>
07	Planting	<ul style="list-style-type: none"> <li>■ Planting should start as soon as the rains are sufficient.</li> <li>■ Seedlings should be planted up right.</li> <li>■ Seedlings should be properly placed into the pit and covered with soil up to 2cm above root collar</li> <li>■ Soil is gently firmed by hand.</li> </ul>
08	Beating up	<ul style="list-style-type: none"> <li>■ Determine survival percentage 2-3 weeks after planting.</li> <li>■ If survival is below 80%, beating up should be immediately done.</li> </ul>
09	Weeding methods	<ul style="list-style-type: none"> <li>■ Appropriate methods are used depending on condition of weeds, availability of labor, size of area and species planted.</li> <li>■ Seedlings are at the very worst spot hoed</li> <li>■ weeds are not allowed to ever grow beyond half the tree height at least in pines</li> <li>■ For Eucalyptus 100% weed control is applied</li> </ul>
i)	Spot weeding	<ul style="list-style-type: none"> <li>■ 1 meter diameter around each tree must be kept weed-free.</li> <li>■ Weeds within 20cm radius of each tree must be hand pulled</li> <li>■ Tree roots must not be damaged during the weeding process.</li> <li>■ Spot weeding should be done up to at least 2 years in pines</li> </ul>
ii)	Line weeding	<ul style="list-style-type: none"> <li>■ Vegetation must be cleared in strips 0.5m either side of the trees.</li> <li>■ Weeds must be hand-pulled within 20cm zone around each tree.</li> <li>■ Tree roots must not be damaged during the weeding process.</li> </ul>
iii)	Slashing	<ul style="list-style-type: none"> <li>■ All vegetation must be cut down up to at least 15cm height.</li> <li>■ Planted trees must not be damaged in the process of slashing.</li> </ul>
iv)	Chemical weed spray	<ul style="list-style-type: none"> <li>■ The spraying team must be properly trained and have suitable equipment in good working order.</li> <li>■ Protective measures must be followed – viz. wearing protective clothing, storing and mixing chemicals.</li> <li>■ Glyphosate is the only herbicide recommended by SPGS for general weed control (others may be introduced later).</li> <li>■ Calibrate equipment and spray team regularly and ensure</li> </ul>

		<p>correct dosage is applied (NB. record daily usage and check actual vs planned rates).</p> <ul style="list-style-type: none"> <li>▪ Only spray when conditions are suitable (little wind and the weeds not above knee height).</li> <li>▪ Check on effect of spraying after 2 weeks if using Glyphosate.</li> </ul>
v)	Climber and coppice cutting	<ul style="list-style-type: none"> <li>▪ A separate operation specifically to remove climbers and cut down re-growth from previous indigenous trees should be periodically done.</li> </ul>
10	Fire protection	<ul style="list-style-type: none"> <li>▪ The site must be divided into compartments (blocks) no larger than 30ha.</li> <li>▪ Each compartment must have a firebreak (or preferably a road) around it: internal firebreaks.</li> <li>▪ A wider, external firebreak (at least 10m wide) should be kept clear around the overall property:</li> <li>▪ Basic fire fighting equipment should be available and workers trained in basic fire prevention and fire-fighting skills.</li> <li>▪ Ensuring the fuel load is kept low (good weeding) is crucial.</li> <li>▪ Neighboring communities must be sensitized on fire danger.</li> </ul>
11	Pruning	<ul style="list-style-type: none"> <li>▪ The pruning team must be properly trained and have the right tools (sharp pruning saws with a handle to suit the pruning height).</li> <li>▪ Pruning is done at the right stage - when the lower branches start dying due to canopy closure.</li> <li>▪ Pruning must be done to the correct height - never prune more than half tree height.</li> <li>▪ Ensure no trash is left within 5m of the edge of the compartment and that it is not left around the remaining, standing trees (for fire hazard reasons).</li> <li>▪ Always do 1<sup>st</sup> (access) pruning to 2 m.</li> <li>▪ Further pruning is recommended to produce high quality sawlogs.</li> </ul>
12	Thinning	<ul style="list-style-type: none"> <li>▪ The thinning team must be properly trained as it is a key operation when growing sawlogs or large poles.</li> <li>▪ Thinning should be done around the time competition sets in (canopy closure - when the branches of trees touch each other).</li> <li>▪ Thin to the recommended stocking (normally to 700 stems per hectare (sph) at 1<sup>st</sup> thinning, 500 sph 2<sup>nd</sup> and 300 sph 3<sup>rd</sup> thinning).</li> </ul>
13	Animal protection	<ul style="list-style-type: none"> <li>▪ Ensure good relations with local communities: try to work together where livestock is causing a problem.</li> <li>▪ External fire breaks must be well maintained to scare wild</li> </ul>

## Contract Management

		<p>animals.</p> <ul style="list-style-type: none"> <li>▪ Routine monitoring/policing may be needed to chase animals away.</li> <li>▪ Ensure that trees are well weeded</li> </ul>
14	Pest/Disease control	<ul style="list-style-type: none"> <li>▪ Maintain plantation hygiene e.g. by keeping trees well weeded</li> <li>▪ Only use chemicals where absolutely necessary (e.g. a specific pest outbreak in the nursery).</li> <li>▪ Pesticides are very rarely recommended for use in plantations.</li> <li>▪ Ensure staff is aware of possible pests and disease threats to plantations.</li> <li>▪ Routinely inspect one's plantations and seek advice from SPGS where necessary.</li> </ul>
<b>SOCIAL STANDARDS</b>		
1	Training	<ul style="list-style-type: none"> <li>▪ Contractor should have the right skills for the plantation activity</li> </ul>
2	Personal Protective Equipment	<ul style="list-style-type: none"> <li>▪ All workers should be provided with basic protective gear such as overalls, gumboots and hand gloves among others.</li> </ul>
3	Social welfare	<ul style="list-style-type: none"> <li>▪ Workers should be provided with food clean drinking water, descent accommodation and wages paid on time.</li> </ul>
<b>ENVIRONMENTAL STANDARDS</b>		
1	Conservation areas	<ul style="list-style-type: none"> <li>▪ Areas such as belts of intact natural forests should not be cleared for tree planting.</li> <li>▪ Wetlands should be clearly demarcated (delineation). No planting should be done in wetlands. Rivers, streams and other water bodies should be protected</li> </ul>
2	Littering of plastics and polythene tubes	<ul style="list-style-type: none"> <li>▪ All polythene tubes should be collected and properly disposed.</li> <li>▪ All empty chemical containers should be destroyed.</li> </ul>

**NB:** Further details of all these standards can be found in SPGS's 2009 publication – ***Tree Planting Guidelines for Uganda***: all supervisory staff should have a copy of this publication.

**ANNEX C: SERVICE APPLICATION FORM FOR TREE PLANTING**

Name of applicant.....date.....

Postal address.....

Fax ..... e-mail.....

Telephone ..... mobile .....

Site location.....

District.....Subcounty.....

village/l.c.1.....parish .....

Forest reserve if applicable .....

Distance from kampala (kms) .....

Size of the plantation (ha) .....

Purpose of plantation (poles ..... timber..... fire wood.....)

Tree species to be planted.....

	<b>type of service applied for</b>	<b>area (ha)</b>	<b>tick services needed</b>
1	land survey		
2	land clearing		
3	piling and burning		
4	lining out		
5	pitting		
6	pre-plant spray		
7	provision of seedlings		
8	planting		
9	beating up		
10	spot weeding		
11	slashing		
12	fire break		
13	pruning		
14	thinning		
15	protection from animals (fencing optional)		
16	Any other		

Preferred date for site inspection.....

Work to commence on.....

Signed..... date.....

Applicant