



Practice Management – accountability, responsibility and limits to authority

2019

Presenters:

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Purpose

1. Understand how defining accountability, responsibility and limits to authority can assist with the effective management of a law firm and the prevention of claims
2. Discuss and poll good practice among WA insureds
3. Consider level of control within own firm

Why this topic?

- A lack of clarity over accountability, responsibility or authority is often the root cause of claims

How will this workshop work?

1

INTRODUCTION

Definitions
Context

2

PRACTICE MANAGEMENT

Guidelines
Root causes
Application

3

CONCLUSION

What will we do?
What should you do?

3 year training program

Training Area	2018/19	2019/20	2020/21
Risk management	<ul style="list-style-type: none"> • Introduction to risk management • Screening 	<ul style="list-style-type: none"> • Providing 	<ul style="list-style-type: none"> • Close out
Practice management		<ul style="list-style-type: none"> • Accountabilities, responsibilities and limits to authority 	<ul style="list-style-type: none"> • Managing firm growth
Matter management	<ul style="list-style-type: none"> • Screening matters and clients • Client identify and risk • Client engagement agreements • Screening for and managing conflicts 	<ul style="list-style-type: none"> • Scoping work and accepting instructions outside expertise 	<ul style="list-style-type: none"> • Deadlines + limitation periods • Client management during delivery • Closing out matters

Related seminars

- **Accountability, Responsibility and Authority – it's all about the limits!**

(Sean Popperwell – July 2019)

How many practitioners are in your firm

- A. Sole Practitioner
- B. 2-5
- C. 6-9
- D. 10-15
- E. >15

How many years in practice

- A. 1 - 5
- B. 6 - 9
- C. 10 - 15
- D. >15

What is your firm's "main" area of specialty?

- A. Family
- B. Personal Injury
- C. Wills & Probate
- D. Commercial
- E. Criminal
- F. Property
- G. Employment
- H. Litigation & Disputes
- I. None

INTRODUCTION

- Definitions
- Context

Definitions

Accountability

- For an outcome
- Cannot be shared

Responsibility

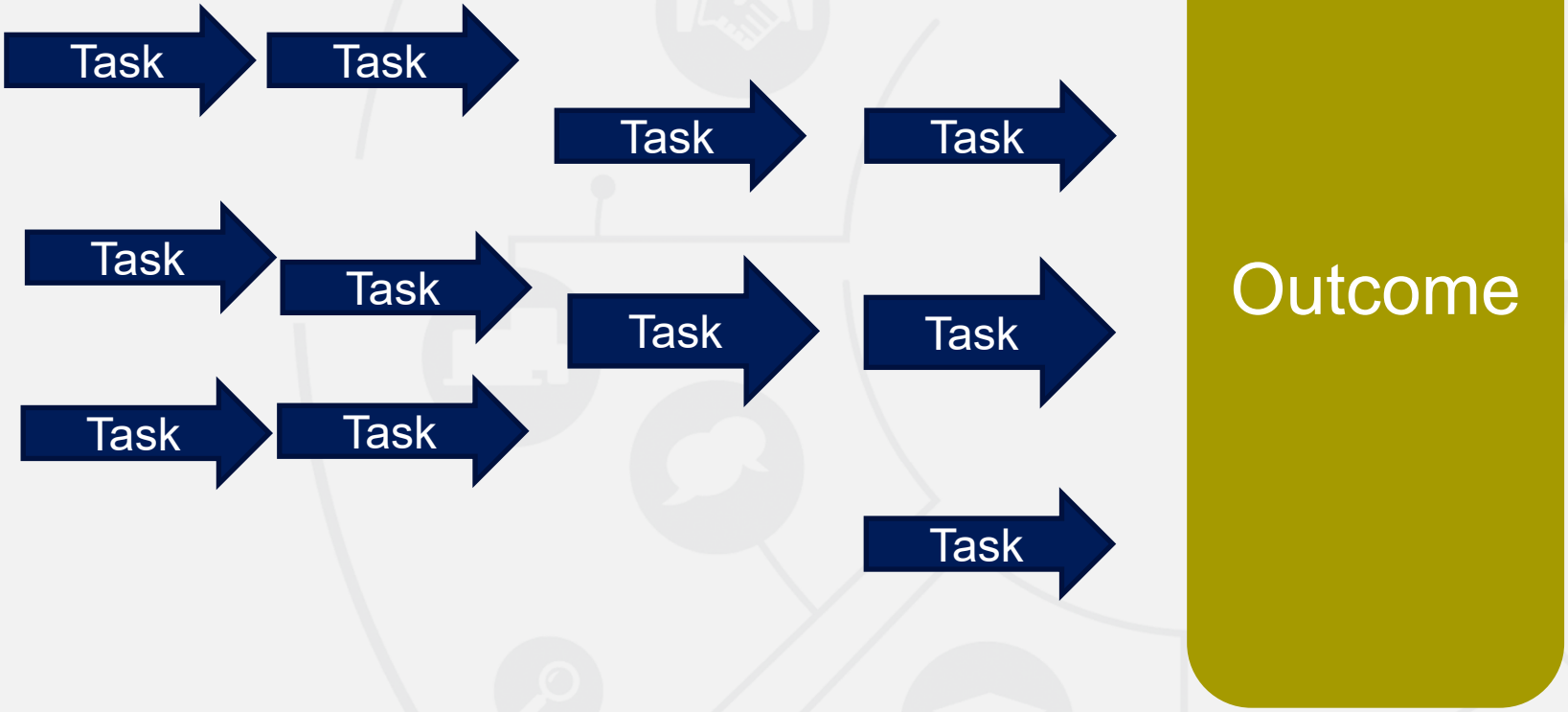
- For a task or activity that contributes to an outcome
- Can be shared

Limits of authority

- What a role can and cannot do independently

Definitions

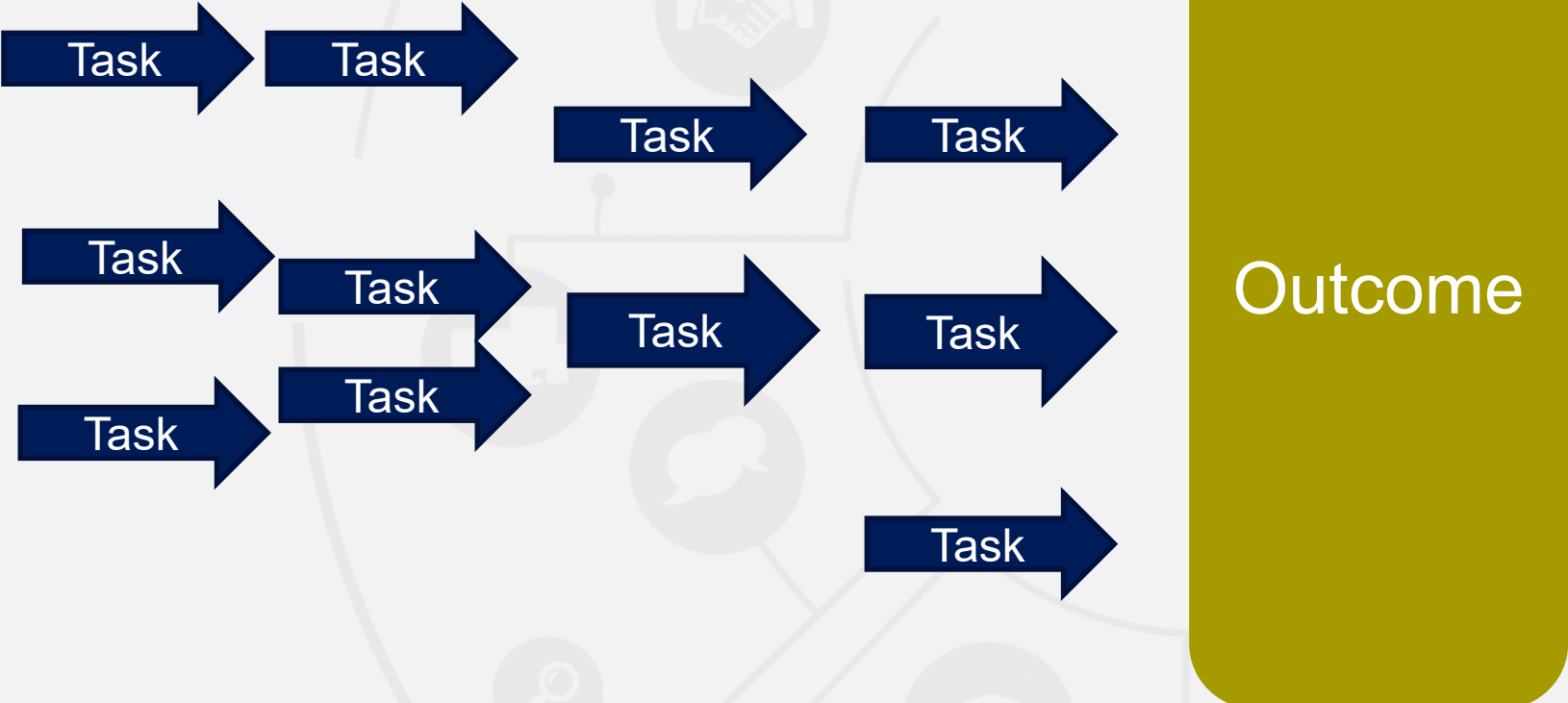
Accountability



Definitions

Responsibilities

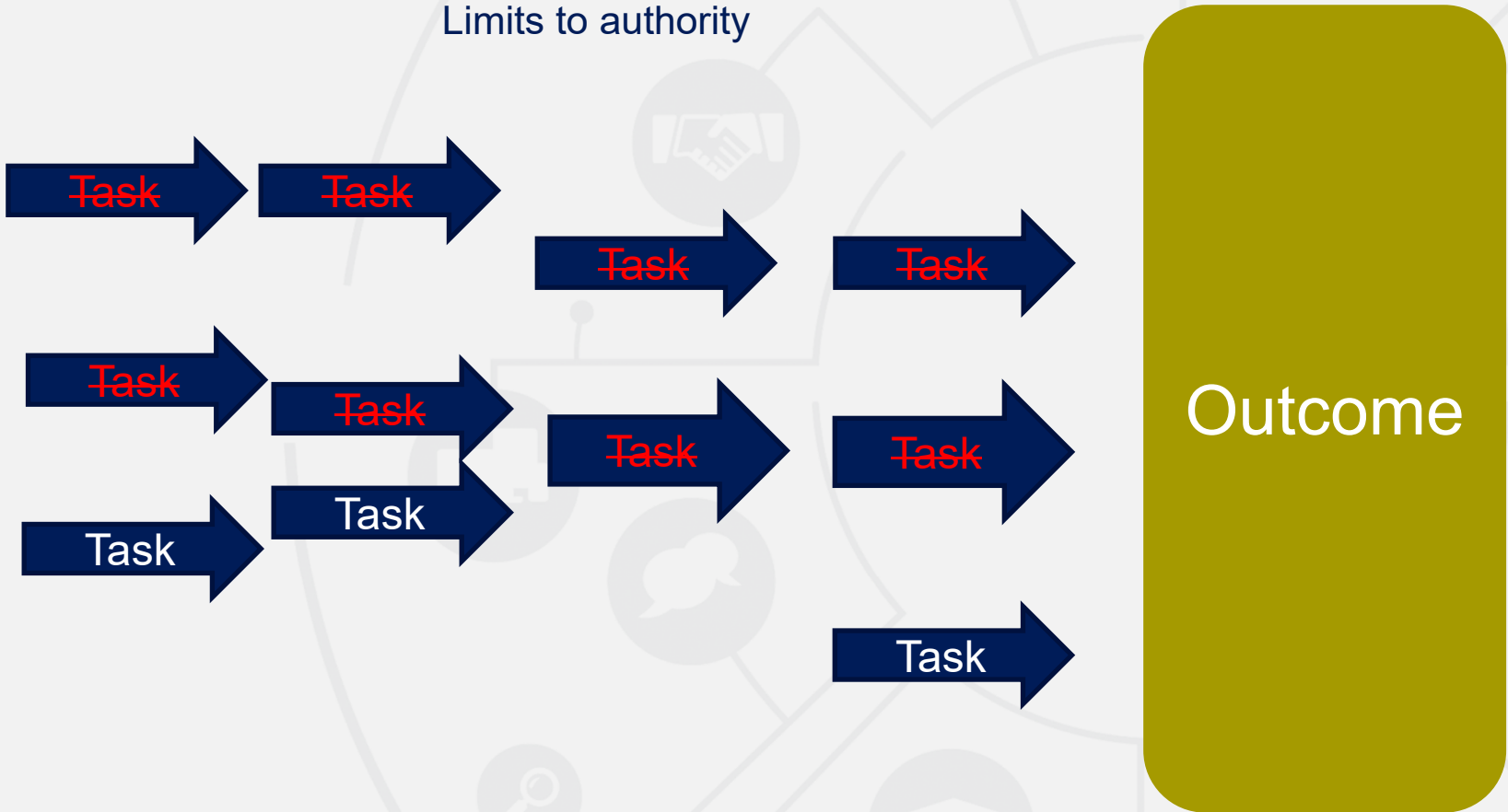
Accountability



Definitions

Responsibilities

Accountability

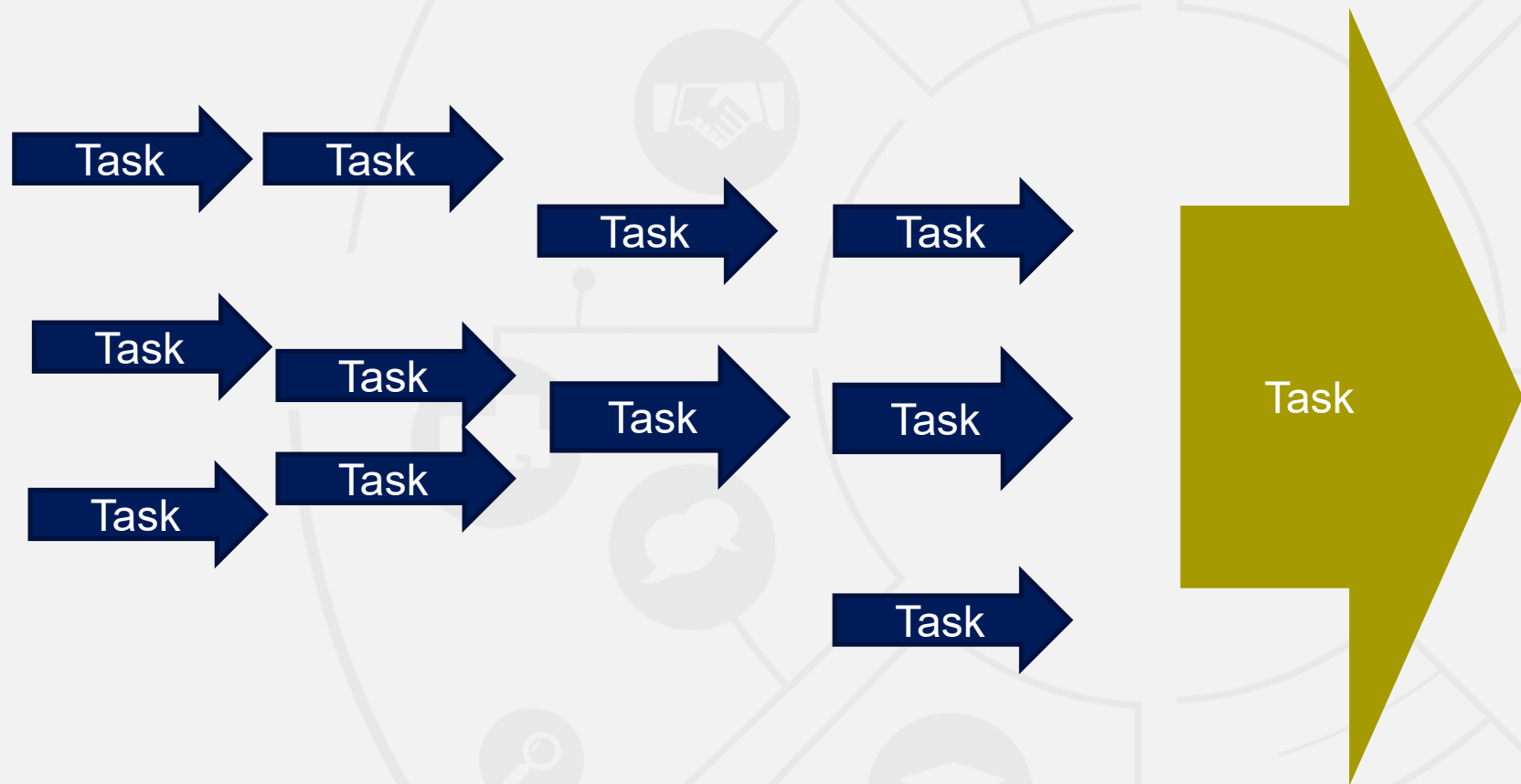


Discussion

- *What accountabilities are defined within your firm?*
- *What responsibilities are defined in your firm?*
- *What limits of authority are defined in your firm?*
- *How are they defined/communicated?*

Why not just have responsibilities?

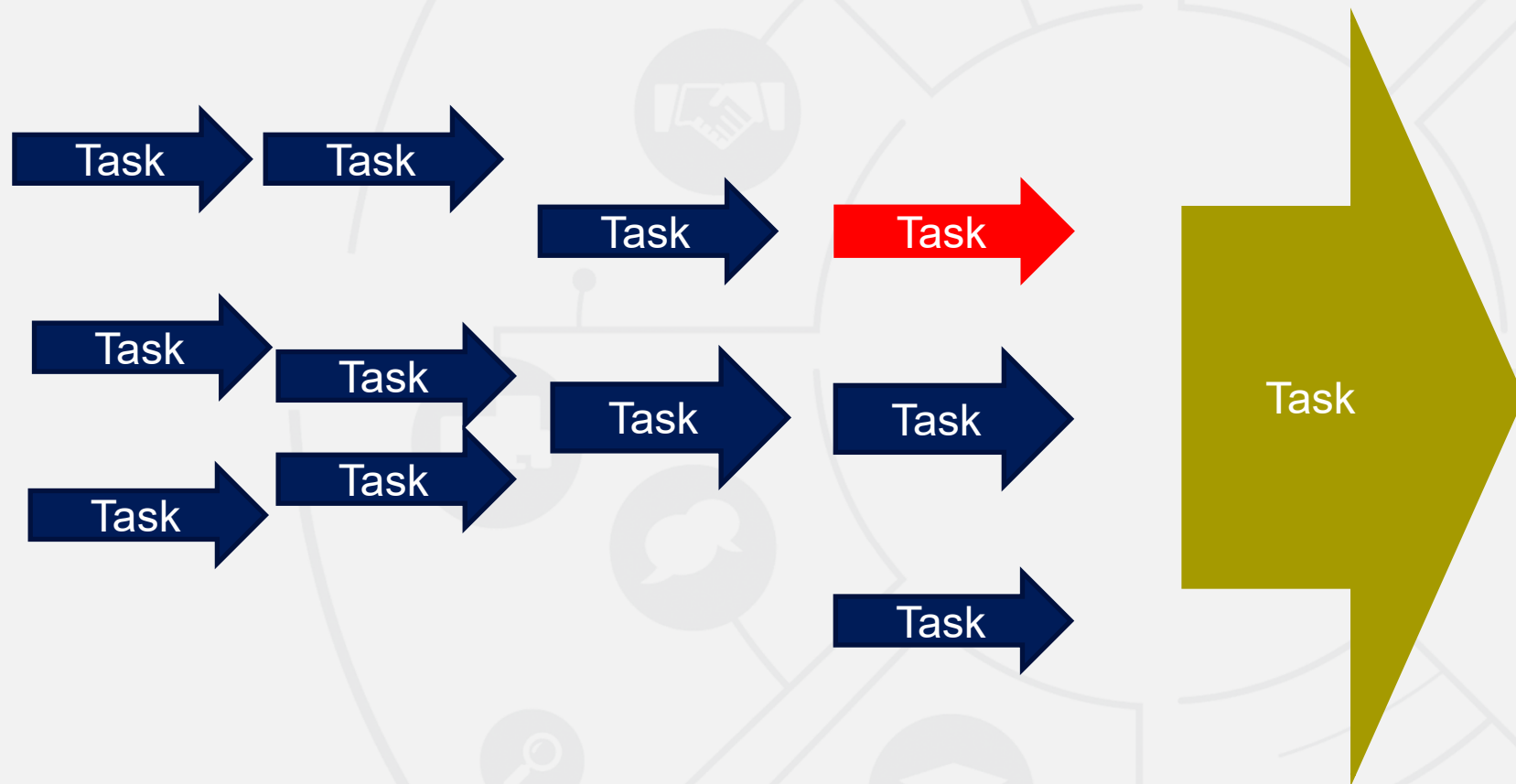
Responsibilities



Accountability reduces buck passing and improves supervision

Responsibilities

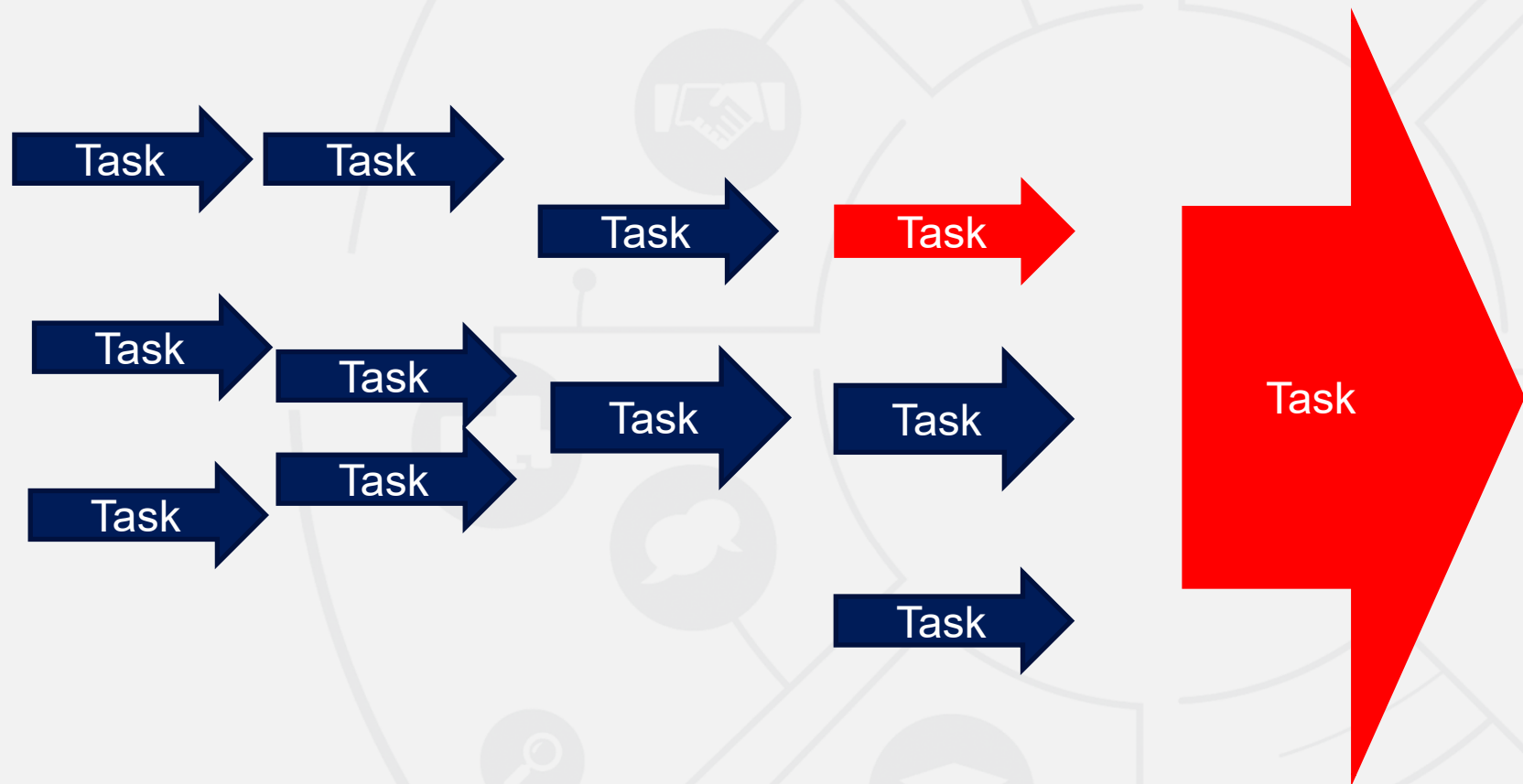
Accountability



Accountability reduces buck passing and improves supervision

Responsibilities

Accountability



Controls

- A. Clear and documented accountabilities
- B. Clear and documented responsibilities
- C. Clear and documented limits to authority

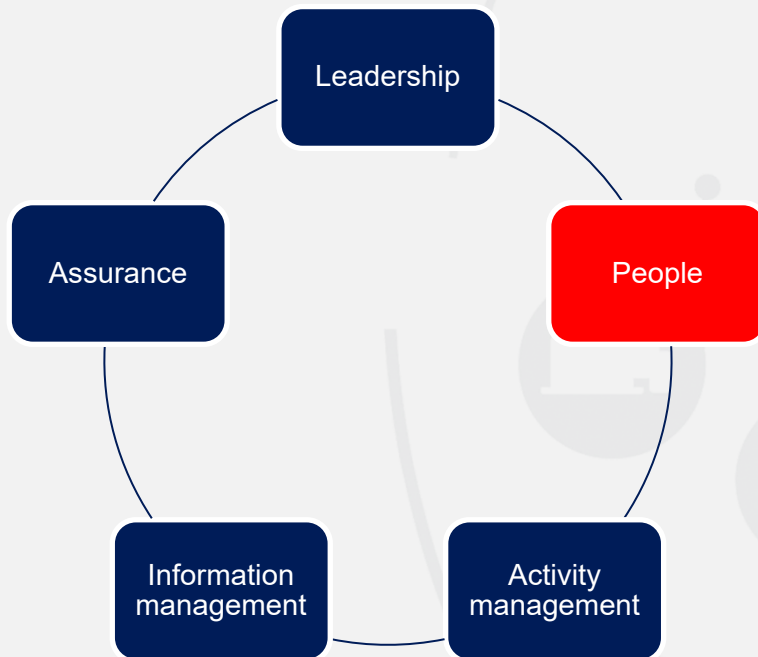
PRACTICE MANAGEMENT

Guidelines
Root causes
Application

Practice management vs Matter management

How to manage a legal *practice* and prevent claims

How to manage a legal *matter* and prevent claims



Practice management guidelines

Element	Requirement
Accountabilities and responsibilities	Clear accountabilities and responsibilities between leaders, supervisors and employees

Practice management guidelines

Element	Requirement
Limits to authority in matter conduct	Defined limits of authority for the conduct of a legal matter that relates to the nature of a matter and the experience and position of employees

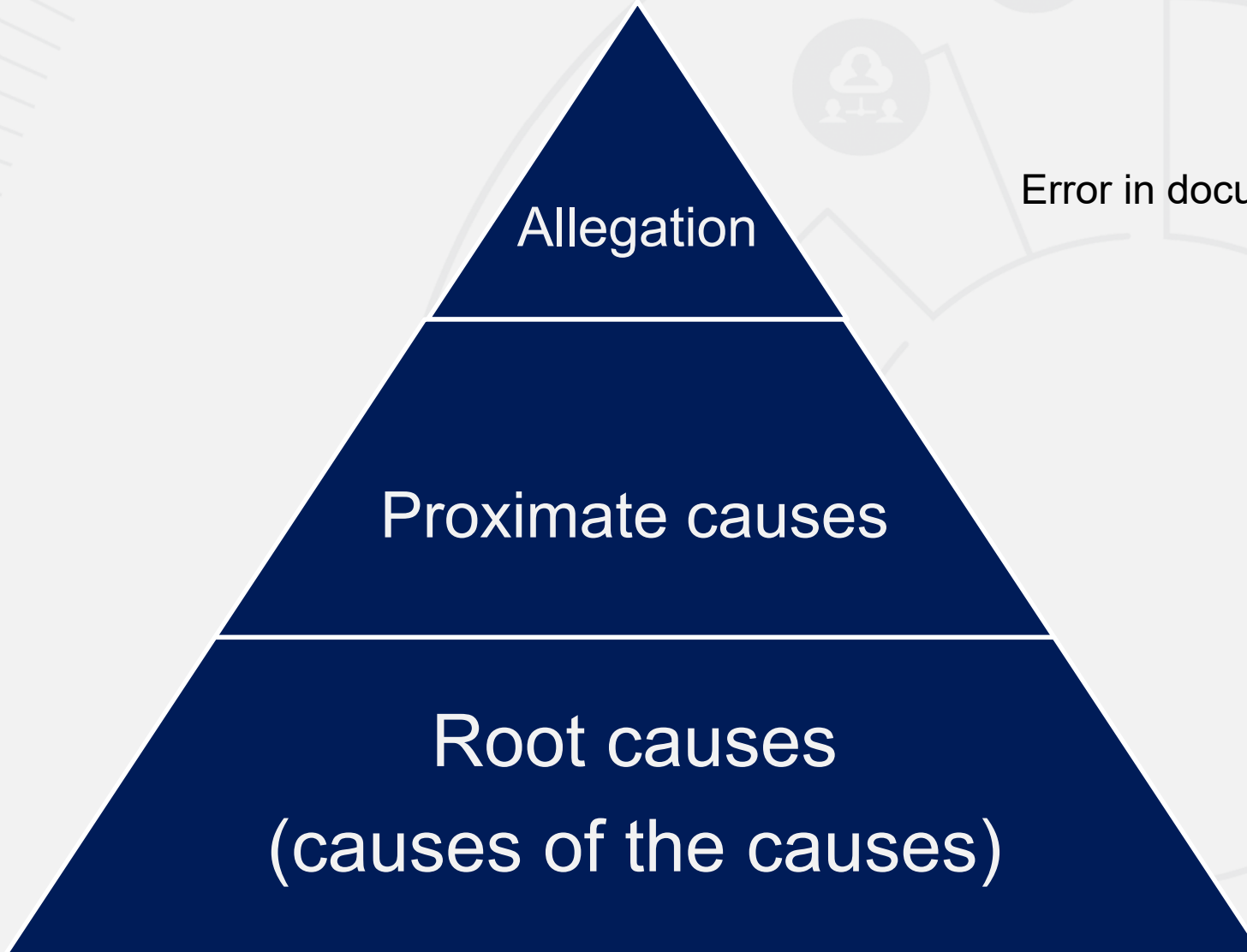
Practice management vs Matter management

How to manage a legal *practice* and prevent claims

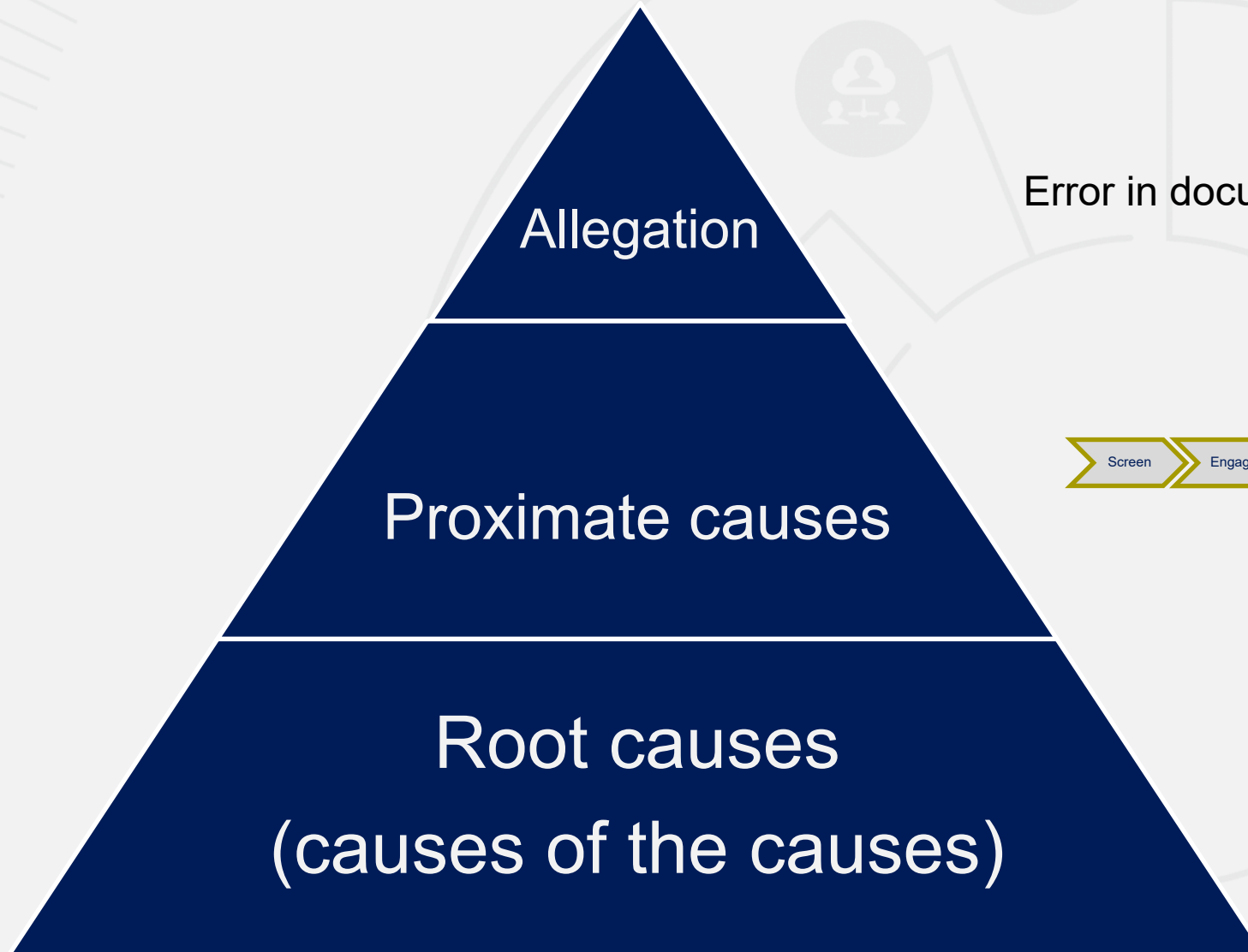
How to manage a legal *matter* and prevent claims



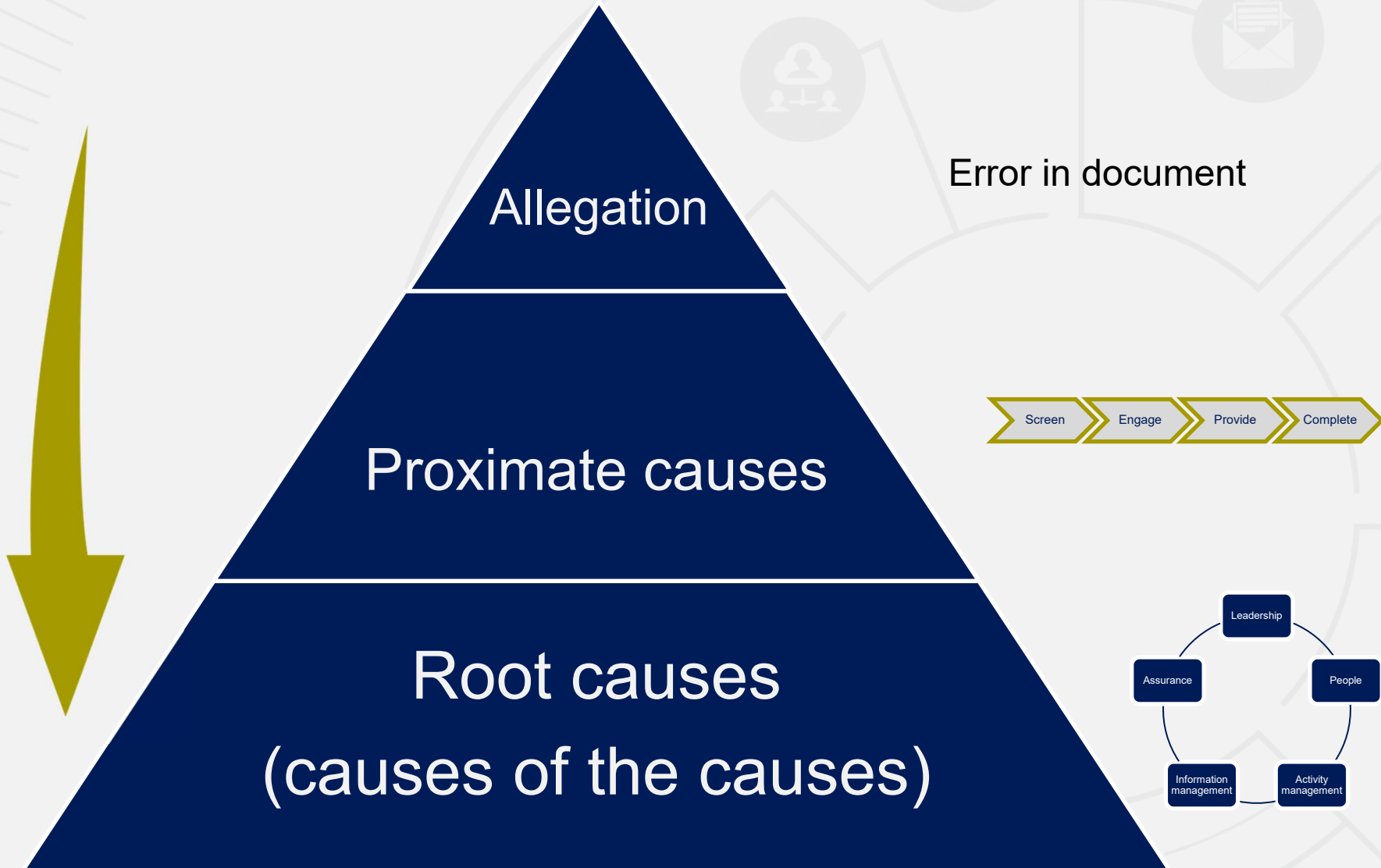
Allegations and causes



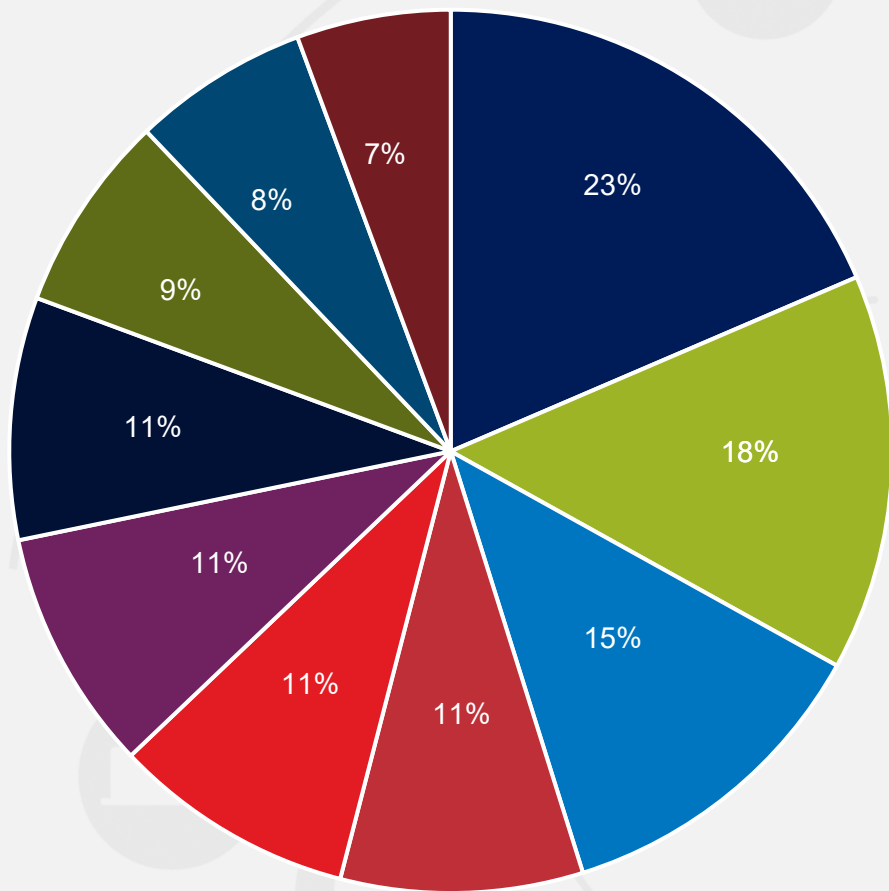
Allegations and causes



Allegations and causes



Allegations



- Missed limitation period
- Error in document
- Incorrect advice or action
- Failure to exercise rights
- Conflict
- Fiduciary duty
- Trial error
- Facts
- Settlement
- Tax

Allegation

- Lease did not account for changes in the Commercial Tenancy (Retail Shops) Agreements Act 1985, as a result rent review clause was invalid, and landlord could only charge increase in CPI
- “Legal error in a document prepared by our lawyer, led to our loss...”

Causes (background)

- Richard, the supervising partner specialised in non-property commercial agreements. Request for ‘simple tenancy agreement on small shop’ came out of much larger matter, for an existing client, and done ‘almost as a favour...’

Causes (background)

- Richard told junior lawyer to draft property lease “using Tony’s precedent”. Tony being the partner specialising in property

Causes (background)

- When reviewing the document, Richard asked the junior lawyer “did you use the correct precedent?” and was told “Yes”. Richard then checked that facts were correctly applied to precedent and that the lease implemented the client’s instructions. He then signed off on it.

Causes (background)

- Tony knew of changes to the Act, and used updated version of the lease on his laptop. He had emailed this version to admin staff and asked them to save into the precedents folder

Causes (background)

- Junior lawyer found “Tony’s precedent” on the shared drive but did not appreciate that property precedents were not always current

Causes (background)

- When asked, Richard said that, so long as the firm's precedent is used, his job as supervising partner is to check that it was been correctly adapted to the facts of the matter, "not recheck the underlying legal basis"

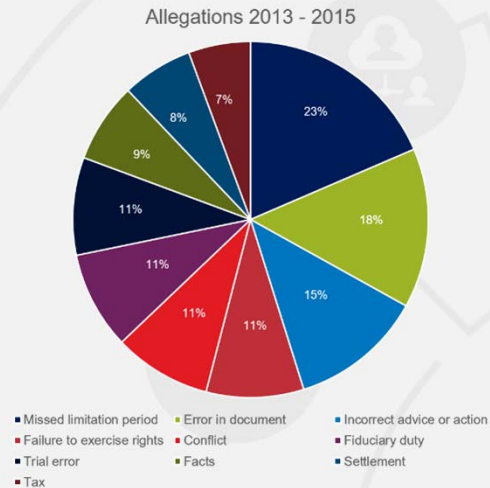
Causes (background)

- In Richard's view, the error had arisen due to:
 - Tony failing to update firm's property precedents, something he (Richard) always did for his commercial agreement templates
 - Junior lawyer failing to confirm with Tony that he had the correct precedent

Causes (background)

- When asked, Tony said that:
 - the admin staff had saved the current precedent to the wrong location
 - were he to need another partner's precedent, he would always check with the partner, not leave it to a junior lawyer
 - had he been asked, he would have given Richard's junior lawyer the correct precedent and reviewed the lease for him

What went wrong? What can we do better?



- Error in document
- Lease did not account for changes in the Commercial Tenancy (Retail Shops) Agreements Act 1985

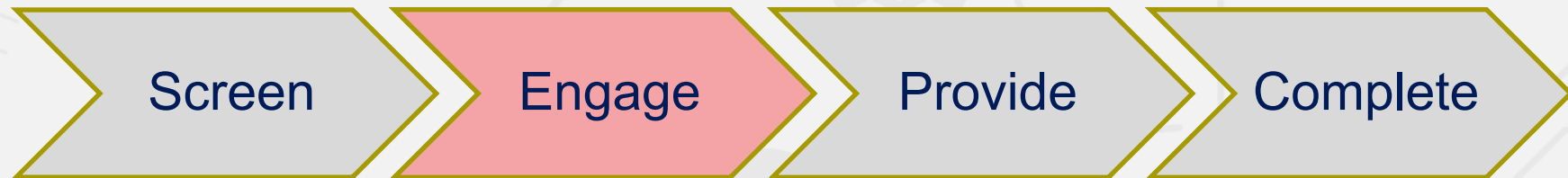
What went wrong? What can we do better?



- Suitable client and matter



What went wrong? What can we do better?



- Possibly should have opened a new matter and allocated to the property partner

What went wrong? What can we do better?



- Precedent not up to date
- Precedent not used correctly
- Document inadequately reviewed

What went wrong? What can we do better?



- If people are blaming each other...

What went wrong? What can we do better?



- Unclear accountabilities and responsibilities

Here...

- Precedent not up to date
 - Unclear **accountability** for current and accurate precedents
 - Unclear **responsibility** for upload of precedents
 - Unclear **responsibility** for selection and use of precedents
- Document inadequately reviewed
 - Unclear **accountability** for legally correct documentation

What can we do better?

If we want to prevent a *broad range* of potential claims and disputes...

- Define accountabilities and responsibilities around precedents
- Define accountability for legally correct documentation

What is your experience?

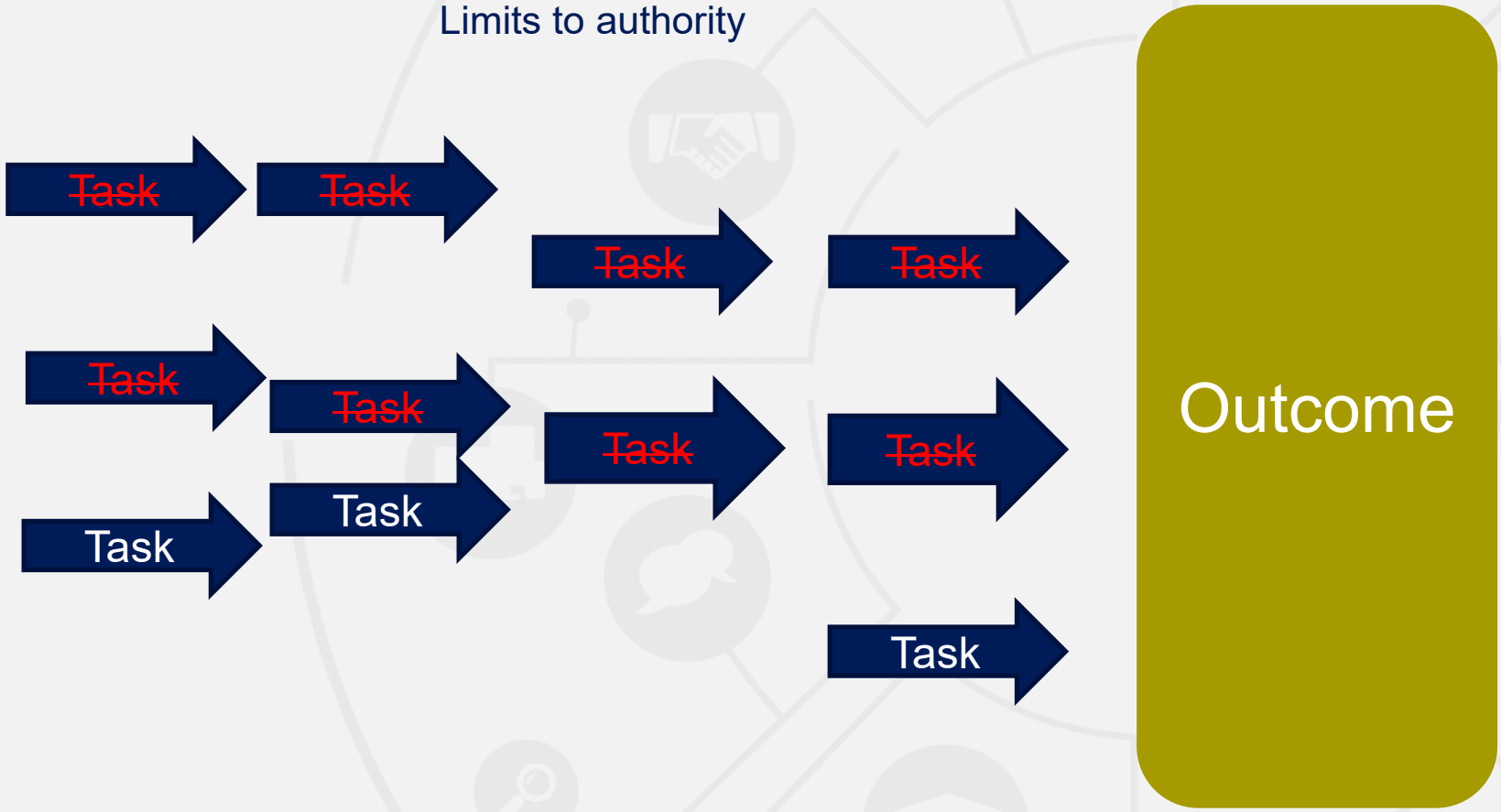
Think back on a claim, significant dispute or near miss...

Did unclear accountability or responsibilities contribute?

Limits to authority

Responsibilities

Accountability



Limits to authority...

- Lawyer on leave, receptionist overhead advising client on lodgement of court documents
- Junior lawyer alters deadline noted on file for limitation period

What is your experience?

Think back on a claim, significant dispute or near miss...

Did unclear limits to authority contribute?

What does it look like?



Partner



Senior lawyer



Junior lawyer



Administration

Roles		Requirement
	Accountable for	Well run Christmas party
	Responsible for	Selecting venue and theme
	Responsible for	Booking venue and catering
	Responsible for	Decorating venue
	Responsible for	Circulating invitation list
	Responsible for	Finalising invitation list
	Authority to	Spend up to \$200 without senior lawyer or partner approval

Over what?



- Requirements in matter management guidelines

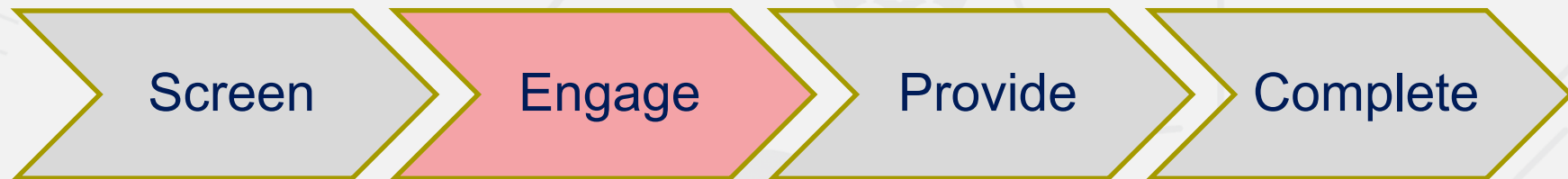
Accountability and responsibility for what?



Client and matter being within firm's risk appetite

- Confirm identity
- Check for conflict
- Understand matter
- Determine suitability of client

Accountability and responsibility for what?



Accurate, documented and shared understanding of instructions, scope, services and costs

- Gather instructions and facts
- Scope matter
- Draft agreement
- Have client sign agreement

Accountability and responsibility for what?



Legally correct and timely advice, representation and documentation

- Gather facts
- Engage experts
- Draft documents
- Obtain and follow new instructions

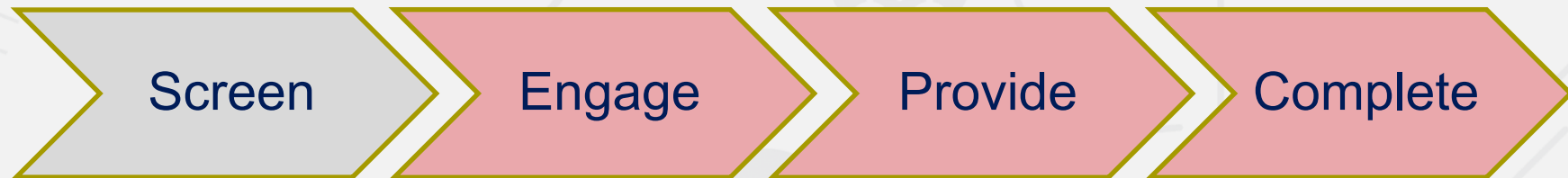
Accountability and responsibility for what?



Satisfactory completion of matter

- Determine legal requirements met
- Advise client on status
- Manage documentation
- Render final bill

Accountability and responsibility for what?



Client satisfaction

Accurate and current precedents

- Communicate with client
- Draft and update precedents

Practice management guidelines

Element	Requirement
	A defined organisational structure reflecting the nature of the Practice and the services it provides
Accountabilities and responsibilities	Clear accountabilities and responsibilities between leaders, supervisors and employees
	Skills and experience linked to personal accountabilities and responsibilities
Limits to authority in matter conduct	Defined limits of authority for the conduct of a legal Matter that relates to the nature of a matter and the experience and position of employees

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Controls

1. Defined organisational structure
2. Clear and documented accountabilities and responsibilities
3. Capability linked to roles
4. Limits to authority
5. Training program linked to above
6. Performance requirements and monitoring linked to above

The background features a light gray circular graphic with various icons connected by lines. The icons include a classical building, a group of people, an envelope, a graduation cap, a magnifying glass, a speech bubble, and a building. The text "THANK YOU!" is centered in a bold, dark blue font.

THANK YOU!