

The logo for K&L GATES, featuring the text in white on an orange rectangular background.

K&L GATES

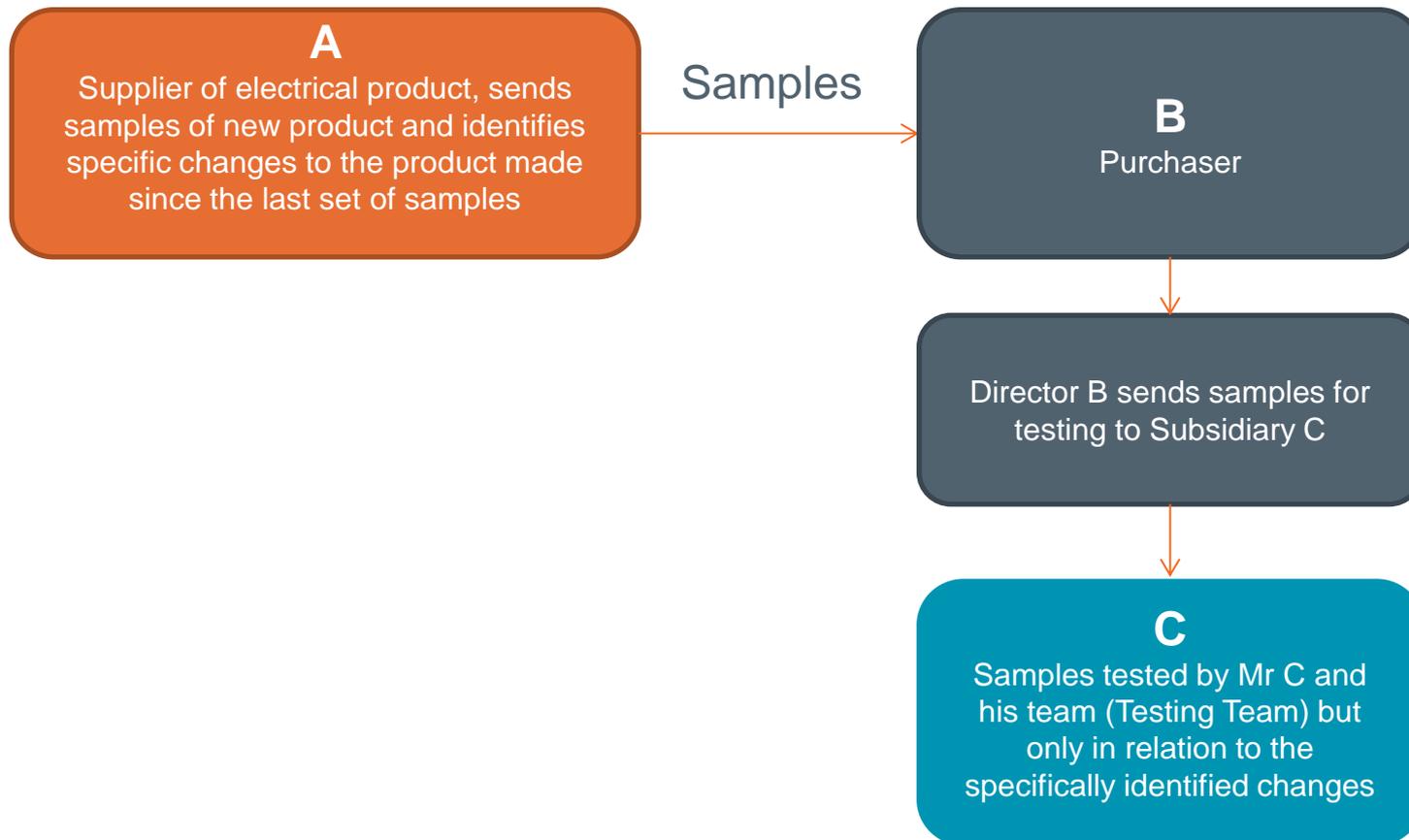
Witness Statements

HOW TO OBTAIN THE RIGHT AND RELEVANT STORY

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WHAT CAN HAPPEN WHEN YOU FAIL TO GET THE RIGHT AND RELEVANT STORY



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Mr C and Testing Team tell Purchaser B that the identified changes to the product are ok and the product is still safe to sell.

Product is distributed and sold widely. Found to be defective and causes fires in peoples' homes. Needs to be recalled. Arbitration proceedings.

On further testing, an important unidentified change found to the design. Witness statements from Director B, Mr C and Testing Team that had they been told of the change they would not have accepted the new product. Witness statements submitted all stating this clearly.

One week before the hearing, a member of Testing Team admits he had in fact noticed and known about the change and remembers that he told Mr C about it.

SO WHAT WENT WRONG?

- The lawyers asked the wrong questions? Only got part of the story?
- Over the passage of time a witness either forget certain facts or convinced himself of something that had become the company position?
- Witness feared the reaction of Mr C and Director B if he told the truth? He lied?
- Miscommunication? Witness was Chinese. Lawyers for B spoke only English.

TIPS FOR PREVENTING DISASTER

- Plan several meetings with witness, to make sure the story does not change each time.
- Make sure the witness is at ease (e.g. not accompanied by his/her boss).
- Ask lots of questions. Make sure you get the whole story not just part of it.
- Listen carefully to what the witness has to say. Do not be tempted to distort the evidence.
- Do not be tempted to feed the witness with legal arguments. Stick to the facts.
- Allow the witness a chance to review material documents as a memory aid.
- Make sure you and the witness understand each other. Use an interpreter if necessary, or take along a bilingual colleague.
- Take lots of notes and keep them.

SOME EXAMPLES OF DIFFICULT SITUATIONS....FOR DISCUSSION

- Dealing with an uncooperative witness.
- Taking a witness statement from an oligarch on the phone whilst he was waiting to check in for a flight – that was all the time “his people” would commit to.
- Getting a statement from a witness and opponents simultaneously served one from the same witness – he said yes to one party and no to the other party.
- A witness changing her story under the pressure of cross-examination.
- A witness denying that his statement was his own when asked to look at the signature and reconfirm it was true and accurate “*Gentleman, I have never seen this document before*”.