The general rule is that, parties are bound by their pleadings. Therefore, a party cannot lead evidence on a fact that has not been alleged in the pleading.

Nonetheless, by reason of the fact that even lawyers are fallible, mistakes in pleadings may be unavoidable. The mistakes could arise in two folds:

1. Omitting to plead material facts on which one would ground their cause of action;
2. Adding undesirable information that makes one's pleading frivolous.

On the other hand, a party may not have made a mistake to begin with. Rather, a party may discover new facts which may strengthen his case long after the pleadings have been filed.

To prevent any injustice from being occasioned, the rules on amendment in **order 16 of C.I. 47** make room for parties or even Judges who have made errors in drafting court processes to correct those errors by way of an amendment.

The overriding principle with regard to the right to amendment as contained in **order 16 rule 7** is that for the purpose of:

a. Determining the real question in controversy between the parties;
b. Correcting any defect or error in the pleadings

amendments may be allowed at any stage in the proceedings of any document on such terms as to costs or otherwise as may be just and in such manner as it may direct.

This may be done on application by a party or by the court on its own motion.

In ***Gandaa v Gandaa and others,*** Benin J confirmed that, the purpose of amendment is to determine the real issues in controversy between the parties. The learned judge also observed that if a party knew of some facts right from the commencement of an action but failed to plead them, he might not be allowed to plead them at a later stage in the proceedings as it *would unduly delay the trial or prejudice the other party's case*. But if he was not aware of the same facts when he pleaded at first, it might afford a sufficient reason to allow him to amend since *he would be said to have acted in good faith*.

The other purpose of an amendment is to correct the errors and defects in the proceedings and this is to ensure fairness and justice. This purpose was given legal backing in the celebrated case of ***Yeboah v Bofuor.***

From the **Gandaa case,** we can glean that, a court will normally and generally allow an amendment provided it is sought to be made in good faith. The principle

adopted by the court is that an amendment must be allowed however late if it can be made without causing injustice to the other side.

The courts grant amendments on the bulwark of doing justice. As such, in the well-known case of ***Cropper v Smith,*** Bowen LJ delivered this famous dictum:

"[I]t is a well-established principle that the object of the Courts is to decide the rights of the parties, and not to punish them for mistakes they make in the conduct of their cases by deciding otherwise than in accordance with their rights . . . I know of no error or mistake which, if not fraudulent or intended to over-reach, the Court ought not to correct, if it can be done without injustice to the other party…."

There is no injustice if the other side can be compensated in terms of cost, according to the rule.

Generally, an amendment will be allowed provided that:

a. it will not entail injustice to the other party or
b. the application is made in good faith.

Usually, the courts take the position that application for amendments are made in bad faith if it is calculated to delay the proceedings and if by the blunder committed, the other party has suffered some injury which cannot be compensated with costs.

This trite principle of law has been beautifully captured by the English courts in the case of ***Tildesley v. Harper*** where Bramwell J held that:

"My practice has always been to give leave to amend unless I have been satisfied that the party applying was acting *mala fide*, or that, by this blunder, he had done some injury to his opponent which could not be compensated for by costs or otherwise"

Ghanaian jurisprudence has adopted this ruling and this was exemplified in the case of ***Adjeley v Sowah.*** Here, the court was of the view that, if it appeared that the way a party had framed his case *would not lead to a decision on the real matter in controversy* it was a matter of right on his part to have it corrected if it could be done without injustice to the other party.

The court continued that *however negligent or careless* a party might have been and however late the proposed amendment, it ought to be granted if it was made bona fide and caused no injustice to the other party or the other party could be compensated by costs or otherwise.

In ***Ghana Airways v Addo,*** it was settled that, inadvertence means negligence or carelessness on the part of a solicitor. It was made clear in this case that one must not just state inadvertence, it must be satisfied with cogent evidence.

On the authority of ***Lowther v Heaver***, the court in **Gandaa** applied the rule that an amendment *which would alter or contradict the evidence already given*, instead of bringing the pleadings in line with evidence already led, must not be allowed.

It is therefore accepted practice to allow a plaintiff to amend at the hearing when such amendment is a substantial one and it is such that the plaintiff could not succeed without it, provided he was acting in good faith. This was the ruling of the court in ***Kappara v Amin.***

Source of power of court to grant amendment

a. **Order 16 of C.I. 47:** This rule mandates the court and parties to apply to amend their pleadings and other documents in the proceeding.
b. **Order 81 rule 1(2)(b):** Where there is non-compliance to the rules, the court may among others, allow such amendments to be made and to make such order dealing with the proceedings generally as it considered just.
c. **Order 4:** This rule generally allows amendment of process by way of joining parties or joining causes of action.

How and When to Amend

Amendment may be made with or without leave of the court depending on the stage of the proceedings.

Amendment of Writ with/without leave

Order 16 rule 1 permits a Plaintiff to amend the writ of summons once without leave of the court at any time before the close of pleadings.

The plaintiff may amend by making interlineations and insert the heading "Amended this…day of ….under order 16 rule 1". If the amendments are so long elaborate as to make the document unreadable, a fresh document in the amended form must be prepared and reissued.

Where a writ of summons is amended without leave after it has been served, the amended writ shall be served on each defendant to the action.

Where a plaintiff amends his reliefs endorsed on the writ, he must also amend the statement of claim to reflect the amendment. It has been held that a relief

that is not repeated in the statement of claim is deemed to be abandoned. Case in point is ***Hasnem v ECG***

Where appearance has been entered by a defendant before a writ of summons is amended by the plaintiff, the defendant is not required to enter a fresh appearance to the amended writ of summons because the amended writ of summons takes the place of the original writ.

Amendment of Notice of Appearance

Under **Order 16 rule 2,** a defendant shall not amend the Notice of Appearance without the leave of the court.

Amendment of Pleadings without leave

By **Order 16 rule 3,** a party can amend his or pleadings once without leave of the court at any time before the pleadings are closed.

Every other amendment must be with leave of the court.

Where a party amends without leave, the amended pleading so filed must be served on all the parties on the other side. When a pleading is amended without leave, it may be give cause automatically to the following as provided for under **order 16 rule 3(2) and (3):**

i. Where an amended statement of claim is served on a defendant who has already filed a Statement of Defence, the defendant may amend his Statement of Defence without the leave of the court to respond directly to the Plaintiff's amendment. The period for the service for the amended Statement of Defence shall either be the period fixed by the rules of service of defence or the period of 14 days, after the amended Statement of Claim is served on the defendant, whichever expires earlier.
ii. Where an amended Statement of Defence is served on the Plaintiff who has already filed a Reply, such Plaintiff may amend the Reply without the leave of the court to directly respond to the defendant's amendment. The period of service of the amended Reply shall be 14 days after the amended defence is served on the Plaintiff.

Order 16 rule 3(6) deals with the situation where a party fails to respond to an amended pleading. In such a situation, the party defaulting will be deemed to rely on his or her unamended pleading in answer to the amended pleading.

The amended pleading takes effect from the date the original pleading is filed as the original pleading ceases to exist.

Striking out Amendments without Leave

Where an amendment is made without leave, when the Party ought to have sought leave prior to the making of the amendment, the amended process could be struck out by the court suo motu or an application by a Party.

The party served with the amended pleading without the leave of the court may apply to the court within **14 days** from the date of the amended was served on him or her to strike out the amendment. When the court hearing such an application is satisfied that the amendment would not have been granted if leave of the court was sought, the court shall order the amendment be struck out. However, the court would have normally not strike out such an amended process if leave would have been granted if same has been sought.

The law is **order 16 rule 4**

Amendment of writ or pleading with leave

According to **Order 16 rule 5(1)** the Court may at any stage of the proceedings upon an application by the plaintiff or any other party grant leave to

(a) the plaintiff to amend the plaintiff's writ; or

(b) any party to amend the party's pleading;

on such terms as to costs or otherwise as may be just and in such manner as it may direct.

Order 16 rule 5(2) provides that Where an application to the Court for leave to make the amendment mentioned in subrule (3), (4) or (5) is made after any relevant period of limitation has expired, the Court may nevertheless grant the leave in the circumstances mentioned in that application if it considers it just to do so.

Amendment to correct names of parties

Order 16 rule 5(3) allows an amendment to correct the name of a party notwithstanding that the effect of the amendment will be to substitute a new party if the court is satisfied that the mistake sought to be corrected was genuine and not misleading or would not cause any reasonable doubt as to the identity of the person being sued. This rule was applied in ***Mussey v Darko.***

Even though such an amendment may be allowed under the rules, it is important that actions are commenced properly in the name of the person or entities vested with the cause of action and as such have capacity to sue.

Naming a non-juristic person as a party, particularly as a plaintiff, may be fatal to the action, since there would be no Plaintiff in law, in the first place for a valid amendment to be effected. This law was upheld in ***Ghana Industrial Holding Corporation v Vicenta Publications.***

Amendment as to capacity

Order 16 rule 5(4) permits an amendment to alter the capacity in which a party sues if the new capacity is one which the party had at the date of the commencement of the proceedings or has since acquired.

It must be pointed out that this rule has changed the position of the law in ***Akrong v Bulley*** which held that a writ issued by a person who lacked capacity to sue was a nullity.

The guiding principle is that, the courts grant leave for the amendment of the capacity of the party if it will do substantial justice.

In the Supreme Court decided case of ***Assemblies of God Church v. Rev Ransford Obeng and Others,*** there was an issue as regards the amendment of the capacity of the defendants who initially sued per the Executive Presbytery. The court speaking through **Dotse JSC** held that, in the circumstances of the case, the Court of Appeal was right in amending the capacity of the plaintiff's in order to do substantial justice, avoid mere and fanciful technicalities and bring out the real issues in controversy for resolution.

Again, in ***Ghana Ports and Harbour s Authority vrs Issoufou***, the Supreme Court held that:

"……the Court had a duty to ensure that justice was done in cases before them and should not let the duty be circumvented by mere technicalities. Since the power to make amendments to the capacities of a party rested in the inherent jurisdiction of the Courts, the Courts could, when the issue was raised either in the trial Court anytime after judgment was delivered or in the appellate Court on the application of a party to the suit, orally or otherwise, grant such amendments as were necessary to meet the justice of the case".

Amendment to add or substitute a new cause of action

An amendment may also be allowed *to add or substitute a new cause of action if the new cause of action arises out of the same facts or substantially the same facts as a cause of action* in respect of which relief has already been claimed in the action by the party applying for leave to amend.

This rule which is **order 16 rule 5(5),** is also aimed at avoiding a multiplicity of suits as all disputes arising from same facts or substantially similar facts can be trued together by way of amendment.

Amendments during Long Vacations

A party may amend the party's writ or pleadings under **Order 16 rule 1 or 3(1)** during a long vacation, however a writ or pleading shall not be amended during long vacations save with the leave of the court, as set out in **order 16 rule 6.**

Amending other documents

On the authority of **order 16 rule 7,** at any stage of the proceedings, the court may, on its own motion or on the application of a party, order any document in the proceedings to be amended as may be just and as may be directed. This is to enable the court to determine the real issues in controversy between the parties or correct any defect or error in the proceedings.

Failure to amend after grant

By **order 16 rule 8,** where the court makes an order giving a party leave to amend a writ of summons, pleading or any other document, the party who so applied for the order shall effect the amendment in accordance with the order of the court before the expiration of the period specified in the order, if no period is specified, 14 days after the order is made.

If the amendment is not effected within the specific period, the order shall cease to have effect but without the prejudice to the power, of the court to extend the period.

In the case of ***Mahama Hausa and Others v Baako Hausa and Another,*** the court ruled that if a court in granting an application for amendment confines itself to granting leave to amend, the failure to file the amendments within the time limited must result in their becoming ipso facto void as laid down in Order 28, r. 7(now **order 16 rule 8)**. But this failure to file the amendments within the time limited is not irremediable. Order 28, r. 7 expressly leaves room for the court to grant an extension of time.

In ***Kwantreng II and Others v Klu,*** the ruling in the Mahama Hausa was relied on. The court also held that Order 28, r.7 of the High Court (Civil Procedure) Rules, 1954 (L.N. 140A) provided that where leave had been granted to amend and the amendment was not effected within the time limited for that purpose by the order, or if no time was thereby limited, then within fourteen days from the date of the order, such order to amend should on the expiration of such limited time become ipso facto void unless the time was extended by the court or a judge.

Effect of Amendment

The principle is that, an amendment that is duly made with or without leave takes effect not from the date the amendment is made but from the date of the original document that it amends. The action continues as though the amendment was inserted from the beginning.

In ***Kai v Amarkye***, the Court of Appeal held that once the pleadings are amended, what stood before the amendment was no longer material before the court and no longer defines the issues that are to tried so that the failure to repeat denials to allegations of fact made in the statement of claim in an amended defence in the absence of a general traverse amounted to an admission of those allegations of fact.

Application for leave to amend

An application for leave to amend a writ or pleading shall be made on Notice to all other parties in the action as mentioned in **order 16 rule 11**. The application shall specify precisely the nature of the amendment intended to be made. An affidavit may be used in an application for the leave to amend.

Case for reference is ***Hasnem v ECG.*** Here, Benin J took the position that Although Order 28 of the High Court (Civil Procedure) Rules, 1954 (L.N. 140A.) did not expressly require an affidavit in support of an application for amendment, that practice had almost crystallised into a rule.

The Notice of application for leave to amend must formulate the exact nature of the amendment to be made.

Amendments of Orders and Judgments

It is common to find that judgments and orders of the court as drawn contain errors or mistakes which are clerical in nature. A party need not appeal or apply for review for such judgments or orders. The rule in **order 16 rule 10** allows for clerical mistakes in judgments and errors arising therein from the accidental slip or omission to be corrected at any time by the court on its own motion on Notice to the parties or on application by a party.

Apaloo CJ in *Omaboe v Kwame* outlined that court had an inherent jurisdiction to set aside or vary its own orders which it could exercise on three broad bases, namely: (1) if there was some clerical mistake in a judgment or order, (2) if there was some error in a judgment or order which arose from any accidental slip or

omission and (3) if the meaning and intention of the court was not expressed in its judgment or order.

The rule was further highlighted in ***Abu Ramadan & Nimako (No.3) v Electoral Commission and Attorney-General.***

<u>The form of the amendment-order 16 rule 9</u>

1. Any amendment authorized may be made in a writ, pleading or other document by making the necessary alterations to the document by handwriting and in the case of a writ causing it to be resealed and filing a copy of same.
2. Where the authorized amendments are numerous or of such nature and length that make written alterations difficult or inconvenient to read, a fresh document amended as authorized shall be prepared and in the case of a writ, re-issued. An example is the filing of a fresh process headed "Amendment Statement of Claim"
3. A writ, pleading or other document which has been amended shall be endorsed with a statement that it has been amended, specifying:
    - the date on which it was amended;
    - the name of the Judge who made the order authorizing the amendment;
    - the date of the order;
    - if no such order was made, the number of the rule of the order under which the amendments were made.