

Practice Session 02

Question 1

Zapp is a partner of 15 years' standing in a law firm, Brannigan & Kroker LLP, who specialises in family law, wills and probate.

Zapp is advising Barbara, a wealthy businesswoman, on her ongoing divorce proceedings against her husband, Hermes. Recently, Hermes applied in the Singapore High Court for a Mareva injunction (i.e. a freezing order) against Barbara's assets worldwide. When the initial hearing appeared to go badly for Barbara, Barbara decided to give an undertaking to the Court that she would not sell, transfer or dispose of her assets in any jurisdiction, pending the outcome of the divorce proceedings. In view of Barbara's undertaking, the Court did not make the freezing order.

Barbara visits Zapp's office some days later, and asks Zapp to advise her on how she can keep her assets in other jurisdictions away from Hermes. In particular, Barbara owns a majority stake in the shares of a UK company Momcorp Ltd (which Hermes does not know about). Barbara plans to cause Momcorp to enter into a reverse-merger transaction with another company listed on the London Stock Exchange, but intends for her resulting allotment of the shares in the new merged entity to be issued to her lover, Slim (i.e. instead of issuing the shares to herself), who resides in the Caribbean. Barbara tells Zapp that the above transaction needs to be completed quickly, because this is a rare commercial opportunity that cannot wait until the divorce proceedings conclude. Zapp pauses to think for a moment, and then says to Barbara:

"The effect of the transaction is that you would no longer own any shares in Momcorp. While this might raise concerns in relation to the undertaking you gave to the Court, I have a solution for you. I will draft a short affidavit for you, which you will sign and affirm today before a Commissioner of Oaths. Your affidavit will say that you need to enter into the transaction with the London-listed entity urgently because it is a rare commercial opportunity, but cannot disclose it to the Singapore Court at this time because of the rules of the London Stock Exchange (LSE). Actually, I have no idea what the LSE rules say, but it should be fine as long as you genuinely believe that the LSE rules prevent you from disclosing. I'm not UK-qualified, so go ahead and read the LSE rules online if you want. The affidavit will also state that you have instructed me, as your lawyer, not to disclose any information about the transaction to anyone without your prior consent. However, we will not file this affidavit in Court. Instead, after signing the affidavit, we will keep the signed affidavit in my office safe. After you complete the transaction, if you need to disclose to the Court in the future that you have transferred your shares away, we will then file this affidavit in Court to prove that you had acted in good faith at the time of the transaction."

Barbara is impressed with Zapp's plan, and agrees. Zapp then quickly prepares the affidavit, and arranges for the Commissioner to come to his office to meet with Barbara. However, while waiting for the Commissioner, Barbara informs Zapp that she needs to leave for another appointment. Zapp tells Barbara that he knows the Commissioner well, and the Commissioner will not mind if she signs and leaves first. Based on Zapp's assurance, Barbara signs the affidavit and leaves. Zapp also leaves the office shortly afterwards. Around 30 minutes later, the Commissioner arrives and proceeds to sign/stamp the affidavit and its exhibits in the presence of Zapp's secretary. Zapp's secretary then places the signed affidavit in the office safe, as instructed.

Several days later, Hermes' lawyer attempts to raise further arguments before the same High Court judge in an attempt to persuade the judge to reconsider the matter and make a freezing order against Barbara. On the morning of the hearing, Barbara's UK lawyers inform Zapp that Barbara's UK transaction documents will be executed in 3 days' time, though Barbara remains the legal and beneficial owner of her shares in Momcorp as at the date of the hearing. During the hearing, Zapp tells the Court:

"Barbara has already given an undertaking, and my instructions are that Barbara certainly has not disposed of any assets."

Having heard parties, the judge declines to grant the freezing order.

Discuss and evaluate the following in relation to Zapp's ethical and professional obligations concerning Zapp's conduct in relation to Barbara's matter.

Please give detailed reasons for your answers, with reference to relevant rules, practice directions, principles and/or case law relating to professional practice, etiquette, conduct, discipline and/or keeping of accounts.

Question 2

Luna is a legal practitioner and managing partner of a Singapore law practice, Mid Law LLP.

Two years ago, Luna acted for Davion, who was the Claimant in proceedings in the High Court against Ricky, the Defendant (the “**Old Suit**”). Ricky appeared in the Old Suit as a litigant-in-person. Following a meeting at Mid Law’s office attended by Luna, Marci (who is Luna’s associate), Davion and Ricky, the parties signed a Settlement Agreement drafted by Luna, and the Old Suit was discontinued by consent. Marci also signed the Settlement Agreement as a witness. The Settlement Agreement *inter alia* requires Ricky to pay a sum of money to Davion in monthly instalments over a period of three years, failing which, the entire outstanding amount plus interest at 12% is immediately due and payable.

Around three months ago, Ricky failed to pay a monthly instalment that was due. Davion initially instructs another law practice, Top Law LLP, to advise him on his potential claim against Ricky, and hands them some relevant documents including the original signed Settlement Agreement. However, Davion changes his mind shortly afterwards and decides to instruct Luna and Mid Law instead. As Davion owes some unpaid fees to Top Law, Top Law delivers the original signed Settlement Agreement to Mid Law based on Luna giving an undertaking to protect Top Law’s lien over the document(s) for unpaid legal costs. Luna does not discuss the above arrangements with Davion, save that she confirms to Davion that she has received the document(s).

Having been instructed by Davion, Luna accordingly files a new claim in the High Court on behalf of Davion against Ricky (the “**New Suit**”) based on Ricky’s breach of the Settlement Agreement.

Ricky instructs a legal practitioner, Carl, to represent him in the New Suit. Ricky’s Defence includes the following pleading:

“[...] The Defendant avers that the Settlement Agreement was drafted by the Plaintiff’s solicitors, Mid Law LLP, and signed by the parties at the meeting on [date]. The above meeting was attended by Luna, Marci, Davion and the Defendant (i.e. Ricky). The Defendant was not represented nor advised by lawyers. At the meeting, Luna informed the Defendant that (1) Luna was representing Davion; (2) that the Defendant did not need a lawyer; (3) that if the Defendant had any questions about the Settlement Agreement, Luna could provide such answers; and (4) that the terms of the Settlement Agreement were fair, and in particular, that the rate of interest of 12% was reasonable and in accordance with industry practice (collectively, the “**Representations**”). The Defendant relied on the above Representations by Luna. [...]”

Davion's position in the New Suit is to deny that Luna made any of the Representations at the meeting, save that Luna had informed Ricky that she was representing Davion. Davion's position is that he will rely on attendance notes typed by Marci during the meeting, as well as the express terms of the Settlement Agreement which state *inter alia* that Ricky confirms that he has had the opportunity to obtain independent legal advice and that Ricky has read and understood its terms, to prove that Ricky's allegations concerning the Representations are untrue.

Carl writes to Mid Law, alleging that Luna, Marci and Mid Law are in a position of conflict of interest, and that they should cease to act for Davion in the New Suit. Carl's letter also states that Ricky intends to call Luna and Marci as witnesses in the Suit.

- (a) Can Luna and Marci act for Davion in the New Suit?**
- (b) Assume that Luna proposes that another litigation partner from Mid Law, Chen, immediately takes over conduct of the matter, with Luna and Marci ceasing to have any involvement - can Mid Law continue to act for Davion in the New Suit under this proposed arrangement?**
- (c) Assume that Davion decides (regardless of Luna's, Marci's and Chen's views on the preceding questions) to instruct a different law practice, Dire Law LLC, to take over the matter, and Mid Law delivers the original signed Settlement Agreement to Dire Law (per Davion's request). A few days later, Mid Law receives an email from Top Law reminding them of the undertaking previously given by Luna and which states that the fees which Davion owes to Top Law remain unpaid. Please advise Luna on whether there has been any potential breach(es) of her professional and ethical obligations in relation to the above, and if so, what should Luna have done instead?**

Please give detailed reasons for your answers, with reference to relevant rules, practice directions, principles and/or case law relating to professional practice, etiquette, conduct, discipline and keeping of accounts.