
Practice Session 01

Question 1

1. Andy is a partner in a Singapore law practice, specialising in tax and trusts. Beth is a partner in the same law practice, specialising in banking law. Clara is partner in the same law practice, specialising in litigation and arbitration.
2. For the past 5 years, Andy has been advising a wealthy businessman, Xavier, on various aspects of his personal wealth. As Xavier tends to pursue high-risk and high-return investments, Andy has advised Xavier on establishing various trusts and corporate structures, for the purpose of legally minimising tax payable, and to protect Xavier's personal assets against potential claims. Xavier tends to only contact Andy when he has a specific transaction or legal issue that he requires legal advice on, and Xavier only provides Andy with information about his assets (including companies which he owns and controls) on a need-to-know basis.
3. Around 2 years ago, Beth advised Vega Bank on a loan to a company, Delta Tech Pte Ltd. Unknown to Beth at the time, Delta Tech is a joint-venture company that is indirectly 60% owned by Xavier via a number of holding companies and intermediaries. At the time, the scope of Beth's instructions from Vega Bank was only to prepare the loan documentation. Vega Bank expressly instructed Beth not to conduct any due diligence (in order to save on legal fees), and accordingly, Beth did not know who the ultimate shareholder(s) of Delta Tech were. At the time, Beth had sent out a firm-wide conflict check email which named Vega Bank as the client and Delta Tech as the counterparty, and received no responses. Delta Tech (as borrower) had engaged a different law practice to advise it on the above loan. On his part, Andy was not aware of the above loan transaction or that Delta Tech was associated with Xavier at the material time.
4. Recently, Delta Tech is reported to be experiencing financial difficulties. Vega Bank is concerned that Delta Tech may default on the loan. Vega Bank's in-house counsel telephones Beth (who has not heard from Vega Bank in the two years following execution of the loan agreement) and asks her what their enforcement options are under the loan agreement. In response, Beth points Vega Bank's in-house counsel to the key terms of the loan agreement, including the usual event of default provisions, and the governing law and jurisdiction clauses. At the end of the call, which lasts around 5 minutes, Beth suggests to Vega Bank to arrange a follow-up call with herself and Clara, as she feels that Clara's input as a litigator will be useful. After Beth approaches Clara, Clara conducts ACRA searches on Delta Tech, which identify a number of holding companies which sit above Delta Tech's immediate shareholders. Clara then sends a conflict-check email to all the lawyers in the law practice, naming all of the companies that appear in the ACRA searches.

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5. When Andy sees Clara's conflict-check email, he recognises the names of a number of companies controlled by or associated with Xavier. At the same time, Andy receives a text message from Xavier stating that Xavier wants to meet urgently to discuss some issues concerning the financial position of some of his businesses. Andy immediately requests for a meeting with Beth and Clara.

Questions

- 1.1 Clara is concerned whether Andy or Beth may have already breached one or more professional conduct rules in relation Beth advising Vega Bank on the loan agreement two years ago. **Please evaluate Andy's and Beth's liability, if any, in relation to Vega Bank and Delta Tech entering into the loan agreement two years ago.**
- 1.2 Andy tells Beth and Clara that they must immediately decline Vega Bank's instructions, in order to preserve Andy's and the firm's working relationship with Xavier, and so that Andy can continue advising Xavier on various matters as he has done for the past 5 years. Beth says that if she has to decline Vega Bank's instructions, she will need to provide them with a reason why. Alternatively, Beth suggests that it may be possible for Andy to continue acting for Xavier, while Beth and Clara can act for Vega Bank. **Please evaluate the approaches proposed by Andy and Beth in relation to their proposed representation of Xavier and/or Vega Bank, respectively.**
- 1.3 Xavier subsequently instructs Andy to advise him on the loan agreement against Delta Tech. Andy is concerned that Xavier may be upset if he finds out that Vega Bank contacted the firm recently about the loan agreement. After the meeting, unknown to Beth and Clara, Andy prepares a draft deed to be signed by Xavier, which provides that Xavier waives and releases any claims against the law practice and its lawyers, and confirms that Xavier has no cause for any complaint against Andy or the law practice. He tells Xavier's personal assistant that he needs this signed for purposes of required routine reporting to the law practice's insurers (no such requirement exists). Being extremely busy, Xavier signs the deed when his personal assistant places it before him, and the signed deed is returned to Andy. **Please evaluate Andy's conduct in relation to the deed signed by Xavier.**

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.

Question 2

Seldon is a legal practitioner of 10 years' standing, and is a partner in the litigation department of Cal Tex Law LLP ("CT Law").

Lennard is a close friend of Seldon, and instructs Seldon to act for him. Lennard had entered into a shareholders' agreement with a few other friends in respect of a company by the name of Las Robles Pte Ltd ("LRPL"). According to Lennard, one of the shareholders, Ragesh, has breached the shareholders' agreement. After confirming that CT Law did not previously act for Ragesh or in respect of LRPL, CT Law issued a letter of demand to Ragesh on behalf of Lennard.

2 days later, Ragesh's lawyers replied, disputing the breach of the shareholders' agreement. Ragesh's lawyers also allege that Seldon's new colleague, Howwie, was involved in drafting the shareholders' agreement on behalf of LRPL and all the shareholders, when Howwie was previously practising in a different law firm.

It turns out that a client from Howwie's former firm, Emily, had engaged the former firm to prepare a draft shareholders' agreement for her. Howwie prepared a draft shareholders' agreement based on Emily's requirements. At the time, Emily did not disclose the name of the company or its shareholders, claiming that it was all very preliminary and nothing has been decided yet. After Howwie sent the first draft of the shareholders' agreement with his explanation of the key terms (and containing blanks / placeholders for Emily to insert the relevant information about the company and its shareholders), she terminated the engagement with Howwie and paid Howwie's invoice personally. The matter was closed more than 4 years ago. Emily eventually did not directly own shares in LRPL, and instead Ragesh held LRPL shares as a nominee on behalf of Emily (this means that although Ragesh is named as the legal owner of the shares, the beneficial owner of the shares is Emily). Apart from Emily, Howwie does not know and has never spoken with any shareholder of LRPL (including Ragesh). Howwie also not aware that the draft shareholders' agreement he prepared was eventually signed by LRPL's shareholders.

Howwie maintains that he acted only for Emily, and only in respect of the initial draft agreement, whereas the executed shareholders' agreement is completely different from the draft he prepared.

Separately, Emily's lawyers issued a letter of demand to Howwie, claiming that if Lennard's action against Ragesh is successful, then Howwie must have been negligent and Emily reserves all her rights to sue Howwie for negligence. Seldon believes this is a strategy to prevent CT Law / Seldon from acting for Lennard.

Seldon wants to continue acting for Lennard notwithstanding the above, and ponders whether he can do so with the "*usual safeguards*".

Critically evaluate all ethical issues arising from Seldon's and/or CT Law's proposed engagement to act for Lennard.

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.