

# Litigation Claims

The following are examples of claims that have arisen in the course of a fi

## Case Study 1 : Missed opportunity

Messrs ABC and Associates (ABC) were representing a large corporation, Evergreen Holdings in its defence against a multi-million ringgit lawsuit. The case had stretched on for many years. Due to the prolonged nature of the case, the case file was handed from one lawyer to another, largely due to turnover of the firms' Legal Assistants (LA).

The last LA to oversee the file attended case management where the judge set the matter down for trial. The LA did not record the trial dates on the case file. The LA also did not record the trial dates into the firm's central diary system.

A month after case management and shortly before the trial date, the LA left the firm. At the exit meeting, the Managing Partner of ABC was informed by the LA that he had completed a successful handover. Assurance was also given that all pertinent dates for the cases and files under his watch have been recorded.

The Managing Partner took over Evergreen's files without assigning it to another lawyer. The Managing Partner did not immediately review the files.

On the day of the trial, neither ABC nor Evergreen Holdings was present in court and judgment was awarded in favour of the Plaintiffs.



### FAILURE TO APPEAR IN COURT!

- ✗ No proper procedure for the handover of files when the LA was leaving;
- ✗ Placing unwarranted trust on the LA;
- ✗ No mentoring system between Partners and Legal Assistants;
- ✗ Failing to review the files upon taking over especially when it involves a multi-million Ringgit lawsuit for a high-profile client.

## Case Study 2 : Absent Counsel

Sam purchased a property and included his 3 siblings (3S) into the title of the property as trustees. Over the course of 20 years, Sam had collected rental income from the property.

Sam fell critically ill and his siblings took over the maintenance of the property, and in doing so, kept what they deemed was their share of the rental monies. Sam eventually recovered and upon discovering the actions of his siblings, took the matter to Court for recovery of the rental income and to remove the 3S from the title.

During the course of the proceedings, Sam established that he purchased the property on his own, and challenged 3S to furnish evidence that they contributed to the purchase price. The siblings' lawyer, Harris, failed to instruct his clients on the matter and no evidence was adduced. The High Court found in favour of Sam.

The 3S instructed Harris to appeal against the decision of the High Court which he did but had not informed the 3S of the date. The appeal was heard and it was struck off. Harris did not inform the 3S of the Court of Appeal's decision and by the time 3S found out, the matter was time barred for an appeal to the Federal Court.



### FAILURE TO ADVISE CLIENT!

- ✗ Lawyer failed to take proper instructions from the Client;
- ✗ No communication between the Lawyer and the Client;
- ✗ Lack of understanding on the fundamentals of the Rules.

# s - Case Studies

n's litigation practice. All names of people and places have been replaced.

## Case Study 3 : Who is your client?

Kenny was approached by a family to represent their daughter, Wilma, in her divorce proceedings. The first few meetings took place between Kenny and Wilma's father and sister, who both insisted the divorce proceed as soon as possible. They told Kenny that Wilma was in a very unhappy marriage, and that she will be better off when the divorce is final.

Kenny met with Wilma only one time. During this meeting, Wilma made it known to him that she wished for substantial spousal support. They had no other meetings thereafter.

Kenny proceeded to file the divorce proceedings in court. Wilma did not attend these proceedings. The Decree Absolute was granted and a decision was made on maintenance and custody of the child. Wilma received a minimal sum in the maintenance. Upon hearing this, Wilma who was at the custodial hearing, was upset to discover first and foremost, that the divorce was in fact, final, and Kenny had failed to inform her of it.

She sued her lawyer for failing to keep her updated on the case, in which case had she been, she would have supplied additional/supplementary instructions for him.



### FAILURE TO SEEK WRITTEN INSTRUCTIONS!

- ✗ Mistake in taking initial instructions from third parties, and not from his actual client;
- ✗ Failure to take proper instructions from the Client when the opportunity arose; and then to not have it confirmed in writing;
- ✗ Making assumptions of the Client's expectations.

## Case Study 4 : Make the effort!

Davies & Co were the legal representative of an insurance company, Gold Inc. for over a number of years. Davies & Co were defending them in a suit brought by an aggrieved party.

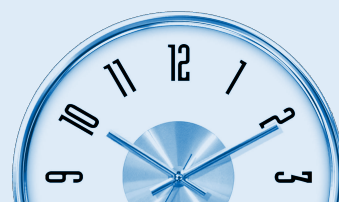
Davies & Co had provided an opinion on liability and opined that the matter should be contested. They lost the case and their client, Gold Inc. was ordered to pay the aggrieved party.

Davies & Co had sent a letter, which was acknowledged received by Gold Inc., asking them for further instructions and whether to appeal.

The period for the appeal had lapsed without any response from Gold Inc. and without any reminder sent by Davies & Co. The aggrieved party applied to execute.

Gold Inc. sent a letter of demand to Davies & Co insisting that the law firm bear half the damages awarded, for failing to appeal on time.

Davies & Co replied in turn, stating that they had written to Gold Inc. to get further instructions, but none was forthcoming.



### MATTER TIME BARRED

- ✗ Failed to have a reminder/KIV system and placing red flags for Appeal;
- ✗ As the Lawyer was on a retainer over a number of years with Gold Inc. he should have been proactive and aware of Gold Inc.'s response time; OR there should have been standing instructions agreed with Gold Inc. with regard to filing appeals;
- ✗ Failed to improve the communication channels with Gold Inc. especially with regard to the appeal.