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# Legal Ethics Hypothetical

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WEDNESDAY 11 MARCH 2026



# Who we are

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# Hypothetical Scenario

## A Fowl Situation



Marcus Brown is a junior employed solicitor at Ridgeway Legal, a boutique firm in the ACT. His supervisor is Patricia, a Partner at the firm. Patricia divides her time between the office and working from home.

Marcus has been assigned his first substantial client, Mr Harold Finchley, a semi-retired accountant who operates a boutique free-range egg business, "Finchley's Free Range", from his lifestyle property in Pialligo.

Mr Finchley is in a civil dispute with his neighbour, Ms Vanessa Thornbury, whom he accuses of deliberately interfering with his prize-winning rooster, "Baron Von Cluck," by administering a substance to the bird before the Royal Canberra Show. Baron Von Cluck was subsequently discovered flat on his back, his legs sticking up in the air during the poultry judging which resulted in disqualification and - according to Mr Finchley - significant economic loss to his egg enterprise, including the loss of a valuable breeding contract.

He wishes to commence proceedings in the ACT Magistrates Court for damages arising from tortious interference with his livestock. In a flurry of enthusiasm for his first contested matter, Marcus begins drafting the pleadings. In his haste, he forgets to provide Mr Finchley with details about potential costs.

# Security for Legal Costs

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Mr Finchley, eager to demonstrate his commitment to the litigation, arrives at Ridgeway Legal's reception with an envelope containing \$15,000 in cash - an inheritance from his late aunt, he explains, which has been kept at home since 1987 '*for safekeeping*'.

Marcus is delighted that Mr Finchley is so eager to proceed. He accepts the cash, places it in his desk drawer, and makes a mental note to deposit it into the firm's trust account when he has a spare moment. Three days later, the envelope is still in his drawer.

Marcus has been meaning to ask Patricia about the proper procedure for documenting the source of funds, but she has been working from home and he doesn't want to bother her with what he assumes is a routine administrative matter.

# Seeking Supervision

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Marcus attempts to discuss several aspects of the matter with Patricia, his supervisor, who is working from home. He sends her a Teams message marked '*URGENT: Trust account query and affidavit questions.*'

Patricia responds three hours later with a thumbs-up emoji and the words '*sounds good, you've got this 👍.*'

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Marcus has been admitted for eighteen months.

The work involves an unusual tort, a cash payment of unclear provenance sitting in his desk drawer, and a client who is already anxious about the proceedings. He feels that the circumstances may warrant more substantive guidance.

He calls Patricia. *‘Patricia, I need guidance on the trust account issue and some questions about evidence.’* There is a pause. *‘Marcus, you’re a solicitor now. I’m sure you can work it out. I have complete faith in you.’* She ends the call. Marcus can hear what sounds like a coffee machine in the background.

# Preparation of Evidence

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Proceedings are commenced. The matter requires an affidavit from Mr Finchley's sister, Dorothy, who witnessed the alleged interference with Baron Von Cluck but has since relocated to New South Wales.



Marcus drafts the affidavit and emails it to Dorothy. He arranges a meeting via Microsoft Teams to go through it with her.

Dorothy, who is an enthusiastic user of technology, has difficulty on the day of the meeting and calls Marcus to apologise and says she has to wait for her grandson to get home to help her.

Marcus says, *'I need to file it this afternoon, it will be OK, just sign it and email it back to me.'* Dorothy cuts and pastes an electronic signature onto the affidavit and sends it back to Marcus. On receiving the affidavit from Dorothy, Marcus witnesses it and proceeds to file it at

## 8

With the interstate affidavit filed, Marcus turns to preparing Mr Finchley's own affidavit.

Patricia has allocated him to three additional matters and an urgent pro-bono file, and he is feeling the pressure. He uses an online version of ChatGPT on his personal computer to draft a timeline of events for inclusion in the affidavit.

ChatGPT produces a detailed chronology. Marcus is impressed by how professional it looks and cuts and pastes it into the affidavit. ChatGPT even gave Marcus some case law to rely on in support of his case, including *Carlisle v Carbon Monoxide Smoke Ball* and *Kerrigan v Airlink*. He keeps these cases on file for reference later.

## 9

Marcus calls Mr Finchley and tells him he has ‘*some papers to sign.*’ He leaves the affidavit with the receptionist, Veronica, with a note for Mr Finchley to sign it when he attends the office.

Upon attending the office, Mr Finchley says to Veronica, ‘*It looks like this needs to be witnessed, can you do that?*’ Veronica says ‘yes’ and witnesses the affidavit.

Veronica gives the affidavit back to Marcus who gives it straight to the filing clerk and asks them to file and serve the affidavit.

# The Directions Hearing

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Matters escalate when Ms Thornbury files a cross-claim alleging that Baron Von Cluck repeatedly trespassed onto her property and caused damage to her prize-winning begonias.

During a directions hearing, opposing counsel, Ms Hartley from Greenfield Partners, challenges several assertions in Mr Finchley's affidavit and points out apparent errors and inconsistencies in the timeline. Two of the events listed appear never to have occurred, and one date is physically impossible given that Mr Finchley was interstate at the time. The Registrar asks.

*'Marcus, Your Honour - Registrar, I mean...'  
'I'm not "Your Honour". Can you explain these inconsistencies in your client's affidavit?'*

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Marcus freezes. He can feel his heart racing and a familiar tightness in his chest. He has been struggling with anxiety for several months - the demands of practice, the isolation of working from home several days a week and alone in the office, and the volume of his workload have combined to leave him feeling overwhelmed.

In this moment, before this clearly frustrated Registrar, everything feels impossibly difficult. He mumbles something about '*needing to review the matter*' and says that '*it's just the vibe of the thing*'. The Registrar sighs audibly.

12

Afterwards, Marcus sits in his car, utterly drained. He closes his eyes “for a moment” and wakes up twenty minutes later, startled. He realises how badly his sleep deprivation is affecting him and drives back to the office slowly and cautiously.

# Preparing for Mediation

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As the matter progresses toward mediation, Mr Finchley provides Marcus with new information he obtained after proceedings were instituted.

He obtained the results of a veterinary report which suggests that the condition leading to Baron Von Cluck's untimely death may have predated the alleged interference by Ms Thornbury. The report significantly undermines Mr Finchley's case.

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Mr Finchley instructs Marcus not to disclose this report to anyone and to proceed with the claim as pleaded. *'We're so close now,'* Mr Finchley says. *'Just keep going. What they don't know won't hurt them.'*

Marcus decides to continue advancing the claim without mentioning the veterinary report because those were the instructions given to him by his client.

# The Mediation

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Before the mediation commences, the mediator, retired solicitor Barbara Sherman, provides a copy of her mediation agreement which requires her fee to be held in trust by the parties' respective solicitors.

Marcus signs the agreement.

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During mediation, Ms Sherman asks Marcus, at the request of the defendant, whether Baron Von Cluck had any pre-existing conditions.

Marcus says he does not know.

# The Settlement

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Marcus relies on *Carlisle v Carbon Monoxide Smoke Ball* and *Kerrigan v Airlink* during the mediation, arguing that courts have made it clear that a defendant is taken to have implied knowledge of a plaintiff's business operations if they are neighbours. He persuades Ms Thornbury's lawyer that their defence is hopeless, and the matter settles at mediation for a modest sum.

# The Billing

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Marcus raises a bill for his services to Mr Finchley. He has been behind in his budget and decides he can make this up by charging Mr Finchley 40% of the settlement sum.

He goes to his drawer to retrieve the \$15,000.00 Mr Finchley gave him at the beginning of the matter and discovers it is missing. He ignores the deposit and invoices Mr Finchley for the full amount of his services.

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Mr Finchley is surprised by the amount on the bill and asks Marcus to provide an itemised account.

Marcus writes back and says to Mr Finchley that he will reduce the bill by \$5,000.00 in lieu of providing an itemised account.

Marcus has not consulted Patricia at all about the bill.

# The Uncovering

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A couple of weeks later, Ms Thornbury runs into Mr Finchley's veterinarian at the CWA Begonia Show.

The vet, who loves their job and can talk under water, excitedly tells Ms Thornbury about a rare condition in chickens she has recently diagnosed in an aptly named pet, Baron Von Cluck. Baron's owner asked her to prepare a report about it which she did, but she never heard what happened to Baron after that.

# The Complaint

21

A complaint is made to the ACT Law Society by Ms Thornbury raising concerns about the conduct of the litigation.

The Law Society writes to Marcus requesting a response within 21 days. Marcus, overwhelmed and uncertain how to respond, drafts a letter that is defensive in tone and omits several relevant details that he fears may reflect poorly on him. He does not mention the AI-generated timeline or the circumstances in which he witnessed Mr Finchley's signature.

He sends the response without showing it to Patricia, telling himself she is too busy to be bothered with administrative matters.

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Some weeks later, Marcus receives a follow-up letter from the Law Society. They have reviewed his response and have some further questions. They note that his letter did not address several matters raised in the original complaint, and they remind him of his obligation to respond in a full and frank manner. They also note that they have received a separate complaint from Ms Hartley concerning the conduct of the proceedings, including the filing of an affidavit that appears to have been improperly attested and the advancement of claims that were contradicted by evidence known to the solicitor.

# The End

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Marcus stares at the letter for a long time. He paces around the office unsure what to do. Wanting to remain calm, he pulls out a joint from his bag and discovers the envelope containing the \$15,000 in cash.

He now remembers putting it there as a reminder to take it to the bank.

He sees his boogie board in the corner of his home office and makes a snap decision to book a one-way flight to Bali.



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