



# AUSTRALIAN ADVOCACY INSTITUTE

## Wood v Chop

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## Relevant Facts and Instructions

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Your brief is entitled 'Brief to Appear for the Plaintiff'.

No papers accompany the brief. Your instructing Solicitor suddenly appears in your Chambers with a client and another person and asks you to 'do something' to stop the mischief about to befall her client.

You learn that no writ has been issued and that instructions were received by the Solicitor ten minutes ago when the client rushed into her office.

The notes you take from the client read as follows:

Michael Wood, 15 View Avenue, Central City. Public Servant. Owner of house at above address jointly with wife, Samira.

Large pine tree straddles boundary at front of number 15. Half on neighbour's side, i.e. on number 17. This owned by Peter and Mary Chop.

There is a bad feeling between neighbours. This has gone on for some time. Started over another tree on common boundary on nature strip. Neighbour did chop that one down. Was charged with assaulting me when I tried to stop him. He was fined \$500.00.

Tree about 10 metres high. It is very beautiful. Neighbour wants to chop it down and has often threatened to do so. We do not want this.

This morning a van bearing the name 'Ace Tree Removals' arrived. The van was a dilapidated old Volkswagen and the sign is hand-painted. Workers came onto our side of the property and started a chainsaw. Called the Police and ordered them off.

Spoke to neighbour. He used vulgar language to indicate that they would go ahead anyhow, but from his side of the fence. Tree removalists disturbed and said they would come back after lunch.

Mr Wood produces a note:

Edna Walling, 35 View Avenue, East Central. Landscape Architect.

A friend of the above. Bachelor of Landscape Architecture. Has supervised removal of trees.

Tree particularly beautiful. Invaluable. Not in danger of falling. In good condition. Because of slope of tree, would require extreme care to remove it without danger of falling on number 15. Does not think it could be safely done from the neighbour's side of the boundary, because of slope of land and tree. Never heard of this removalist. Doubts if he knows what he is doing. Real risk of damage.

It is now 11.00am.

The Solicitor's clerk rings your Chambers and tells you that she has Mrs. Wood on the phone.

Mrs. Wood says the tree removal truck has come back. She has rung the Police who say they will do nothing – it is a domestic dispute, and if there is no trespass by the workmen on the Wood's land, they cannot intervene. Mrs Wood has also asked the workmen what they intend doing and they told her they are going to chop the tree down anyway.

She pointed out to them:

- a) they have no permission from her or her husband,
- b) their house is at risk of the tree falling on it if they chop it down from the Chop's side.

The removalist said they didn't need permission from the Woods. Mr. Chop has told them he owns the tree and has authorised them to chop it down. They also said if the tree fell on the Wood's house it would be their problem and their fault because they had refused permission to enter their land to chop it down.

Your Solicitor instructs Mrs. Wood to tell Mr. Chop and the workmen that they – the Woods – intend to apply for an injunction to stop the felling of the tree, and to ask them to refrain from their work until the application can be made. Mrs. Wood does so and they tell her they have no intention of stopping what they are doing. They say as soon as their mate arrives with some rope, they will start work.

Apart from loss of the tree, the Woods fear that if the removal is not very carefully done, the tree could fall and strike the Woods' house.

House and garden of No 15 (Woods) is subject to an Historic Buildings Preservation Order. No changes can be effected without prior approval of the Historic Building Council. The tree is not subject to the Order. It is regarded by the H.B.C. as 'out of keeping' with the rest.

Mr Wood says the Chops do not keep their house and land looking good, the back garden looks like a junkyard. Mr. Chop has often said he does not care for 'pretty rules'. When he renovated their house two years ago, he did it without first obtaining building permits and Council approval. Mr Wood reported him to the Council and they made him change his plans.