

**IN THE HIGH COURT OF AUSTRALIA**

**SYDNEY REGISTRY**

No S100 of 2017

BETWEEN:

**JOHN DOE**

Plaintiff

AND

**THE COMMONWEALTH**

Defendant

**SPECIAL CASE**

1. In January 2015, following a visit from the King of the Indian Ocean Kingdom of Ruritania, the Commonwealth of Australia entered into a bilateral treaty with Ruritania. The treaty formalised the countries' joint endeavour to preserve a rare plant which was rapidly perishable, could not be transported, and could grow only in rural New South Wales farmland and in Ruritania. The plant was important to Ruritanians who were able to extract a chemical from the plant for use in traditional medicine.
2. Article 10 of the *Ruritanian Plant Treaty 2015* concerns the power of both countries to withdraw from the treaty. It provides that Australia or Ruritania can unilaterally withdraw from the treaty "in accordance with its own constitutional requirements" and by giving notice to the King of Ruritania or the Prime Minister of Australia (respectively), and that the treaty "shall cease to apply three months after the receipt of notice of intention to withdraw".
3. In January 2016, the Commonwealth Parliament passed the *Ruritanian Plant Act 2016* (Cth). The Act commenced on 30 January 2016. Section 5 of the Act provides that it is an offence, punishable by a fine of up to \$150,000, for a person to destroy the plant intentionally.
4. In July 2016, a scientific report by researchers at a Ruritanian university demonstrated that the chemical in the plant used for Ruritanian traditional medicine in New South Wales has no medicinal effect on the human body. In Ruritania there was no longer any interest in the plant for use in traditional medicine. But there was considerable

concern in Ruritania about the fate of the traditional medicine practised by New South Wales Ruritarians in that State. This was particularly because a large industry in that State had developed around the use of the plant. There was a strong political debate in Australia concerning whether the *Ruritanian Plant Act 2016* (Cth) should continue in force.

5. A Bill to repeal the *Ruritanian Plant Act 2016* (Cth) passed in the House of Representatives on 1 August 2016, but it did not pass in the Senate.
6. On 1 September 2016, the executive government of the Commonwealth of Australia gave the King of Ruritania official notice of the Commonwealth's intention to withdraw from the *Ruritanian Plant Treaty 2015*. Relations between Australia and Ruritania substantially deteriorated.
7. One month later, a federal election was held and a new government was elected, having successfully campaigned on a platform which included retaining the *Ruritanian Plant Act 2016* (Cth), and committing the Commonwealth to its treaty obligations with Ruritania.
8. Mr John Doe had one of the largest crops of the plant in New South Wales. On 1 January 2017, he intentionally destroyed his crop to plant a much more profitable field of corn. On the same day, he was charged with an offence under s 5 of the *Ruritanian Plant Act 2016* (Cth).
9. Mr Doe has commenced a proceeding against the Commonwealth of Australia in the original jurisdiction of the High Court of Australia. He seeks declarations that the Commonwealth effectively withdrew from the *Ruritanian Plant Treaty 2015*, and that the *Ruritanian Plant Act 2016* (Cth) was invalid on 1 January 2017.
10. The Commonwealth concedes that the only head of Commonwealth power which supported the *Ruritanian Plant Act 2016* (Cth) when it was enacted was s 51(xxix) of the Commonwealth Constitution. Mr Doe concedes that the Act was valid until 1 December 2016.
11. For political reasons, the Commonwealth submits that the *Ruritanian Plant Treaty 2015* has always been in force. But, after the Prime Minister of Australia discusses

this proceeding with the King of Ruritania, on 1 July 2017, the countries enter into an identical treaty to the 2015 treaty, now styled as the *Ruritanian Plant Treaty 2017*.

**The following questions have been reserved for the consideration of the Full Court:**

- 1) If the *Ruritanian Plant Treaty 2015* were no longer in force on 1 December 2016 then:
  - (a) would s 5 of the *Ruritanian Plant Act 2016* (Cth) be supported by s 51(xxix) of the Commonwealth Constitution at that date in the absence of the treaty?
  - (b) If the answer to 1(a) is "no", then would s 5 become prospectively invalid from 1 December 2016?
  
- 2)
  - (a) If the answer to (1)(b) is "yes", then, without a legislative act, was it beyond the power of the executive government of the Commonwealth of Australia to give the King of Ruritania official notice of the Commonwealth's intention to withdraw from the *Ruritanian Plant Treaty 2015*?
  
  - (b) If the answer to 2(a) is "yes", does this have the effect that no offence was committed by Mr Doe on 1 January 2017 under s 5 of the *Ruritanian Plant Act 2016* (Cth)?

## CORRECTIONS AND CLARIFICATIONS

The following corrections and clarifications have been issued in relation to the 2017 Sir Harry Gibbs Constitutional Law Moot problem.

Question 2(b) is amended. The amendment to the text is underlined. Question 2(b) now reads as follows:

If the answer to 2(a) is "yes", does this have the effect that no offence was committed by Mr Doe on 1 January 2017 under s 5 of the *Ruritanian Plant Act 2016* (Cth)?

Additionally, the following facts now form part of the problem:

12. The plant species in New South Wales and Ruritania are identical.
13. In paragraph [4], the reference to 'that State' in the sentence ending '... the fate of the traditional medicine practised by New South Wales Ruritarians in that State' is a reference to the State of New South Wales.
14. In paragraph [4], the reference to 'New South Wales Ruritarians' in the sentence ending '... the fate of the traditional medicine practised by New South Wales Ruritarians in that State' is a reference to persons who are dual citizens of Australia and Ruritania living in New South Wales.