# HIGH COURT OF AUSTRALIA

21 June 2017

JOHN RIZEQ v THE STATE OF WESTERN AUSTRALIA
[2017] HCA 23

Today the High Court unanimously dismissed an appeal from the Court of Appeal of the Supreme Court of Western Australia. The appellant had been convicted on two charges in the District Court of Western Australia of offences against s 6(1)(a) of the *Misuse of Drugs Act* 1981 (WA) ("the MDA"). Although a jury of 12 persons had been unable to reach a unanimous verdict on either charge at trial, the decisions of 11 of the 12 jurors were taken by the District Court to be verdicts of guilty under s 114(2) of the *Criminal Procedure Act* 2004 (WA) ("the CPA"), and the District Court convicted the appellant of both offences accordingly.

The appellant was at all relevant times a resident of New South Wales. His trial involved a matter "between a State and a resident of another State" within the meaning of s 75(iv) of the Constitution and the District Court therefore was exercising federal jurisdiction under s 39(2) of the *Judiciary Act* 1903 (Cth). The appellant's appeal to the Court of Appeal was dismissed and, by grant of special leave, the appellant appealed to the High Court. The appellant argued that, because the District Court was exercising federal jurisdiction in his trial, Western Australian law was incapable of valid application to the determination of his criminal liability in that trial. The appellant argued that s 6(1)(a) of the MDA could not and did not apply as a law of Western Australia, and instead was picked up and applied as a law of the Commonwealth by operation of s 79 of the *Judiciary Act*. The result, the appellant argued, was that his trial was a trial on indictment of offences against a law of the Commonwealth for which, by operation of s 80 of the Constitution, the verdicts of the jury were required to be unanimous.

Dismissing the appeal, the High Court held that the appellant's trial was of offences against a law of a State, not of offences against a law of the Commonwealth, and that s 80 therefore had no application. Section 79 of the *Judiciary Act* was not needed, and was not engaged, to pick up and apply s 6(1)(a) of the MDA as a law of the Commonwealth. The plurality held that, as a State Parliament is incapable of commanding a State court as to the manner of its exercise of federal jurisdiction, s 79 is a law enacted by the Commonwealth Parliament to ensure that the exercise of federal jurisdiction is effective. Section 79 fills a gap in the law governing the exercise of federal jurisdiction which exists by reason of the absence of State legislative power, by picking up the text of a State law governing the exercise of State jurisdiction and applying that text as Commonwealth law to govern the manner of exercise of federal jurisdiction. Its operation is limited to making the text of State laws of that nature apply as Commonwealth law to bind a court in the exercise of federal jurisdiction. Section 79 has no broader operation. Section 6(1)(a) of the MDA is a law squarely within State legislative competence and is outside the operation of s 79.

The High Court further held that s 79 was needed and was engaged to pick up and apply the text of s 114(2) of the CPA as a law of the Commonwealth. Section 114(2) of the CPA, being a law governing what is to be taken to be the verdict of a jury, can apply to a Western Australian court only when that court is exercising Western Australian jurisdiction. Section 79 operated to apply the text of s 114(2) as a Commonwealth law to a Western Australian court when that court was exercising federal jurisdiction, except as otherwise provided by the Constitution or by some other Commonwealth law.

- *This statement is not intended to be a substitute for the reasons of the High Court or to be used in any later consideration of the Court's reasons.*

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