

STATEMENT OF FACTS

1. Hallbach is a federal democratic republic in Eastern Europe, known to be rich in natural resources. Hallbachian exports of natural gas alone contribute to almost 25% of its GDP. Hallbach has abundant reserves of precious stones, uranium and iron ore. Hallbach, comprising of seven provinces, follows the Common Law system and has a criminal justice structure similar to that of India. It has a Federal Court, along with different High Courts for the states comprising the federation.
2. Hallbach shares its western territorial border with Hoko. Both countries have a long-standing territorial dispute. Hoko has claimed the land on which two of Hallbach's cities, X and Y, are situated. This area is close to the current international border between Hoko and Hallbach. Historically, X and Y were within the territory of Hoko. In March 1773, Hallbach's then ruler King Victor invaded Hoko and annexed Hokian territory during the 'Weer War', including X and Y. The land around X and Y are the richest in natural resources in the region – though experts disagree whether this fact was known at the time of annexation.
3. During Weer War, Hallbachian troops killed the Hoko king Duke Nicholas V on the first Sunday of the war. His son, Nicholas VI (then aged 6) was hurriedly crowned sovereign of the territory by Hallbach and on the occasion of his anointment, he 'gifted' the famous emerald "*Covfefe*" to the Hallbach crown. The emerald, then believed to be the largest in the world, was transferred to King Victor in a public ceremony. Nicholas VI was exiled to his Castle Hill estate in the French Alps and died in Paris, several decades later. Historians have disputed whether or not the 'gift' was valid, on grounds of Duke Nicholas' age, the circumstances of his being crowned king, the lack of any regent and the meaning of the name, *Covfefe*.
4. When Hallbach became a constitutional democracy in 1949, the emerald was treated as a national asset and displayed in the State Museum at 'X'. The first Sunday of every March is celebrated as *Covfefe* Day. It is a symbol of Hallbachian pride, is present on the Hallbach flag and the Hallbachian national anthem always ends with a rousing cry of '*Covfefe! Covfefe! Covfefe!*'

5. However, Hoko maintained a historical claim over the emerald. Several legal and constitutional experts, both in Hallbach and in Hoko, believe that Hoko may have a legitimate claim on the emerald. Dr. Ares, the curator of the State Museum at X was a decorated Hallbachian special forces officer and now a renowned scholar. He too believed that though Hallbach now legitimately held *Covfefe*, Hoko also had a legitimate historical claim. However, Dr. Ares further argued that since Hoko was a 'tinpot dictatorship,' the emerald was safer in Hallbachian hands as it was a part of the cultural heritage of the whole world.
6. Since 1975, Hoko had a succession of military dictators that rule through a puppet Senate Assembly. In 1999, after constitutional changes and internationally overseen elections, the former dictator, General Rouge was democratically elected as the President of Hoko. It was believed that General Rouge continued to rule with an iron hand and people did suspect his high polling numbers. Hallbachian commentators and politicians still believed that Hoko was a dictatorship.
7. The hated secret police, the Hoko National Guard had been disbanded and there was genuine hope in Hoko and the rest of the world (not including a majority of Hallbachians) that Hoko would soon be a functioning democracy with a booming economy. Hoko instituted and followed a successful foreign policy imaginatively titled 'Look Anywhere But East Policy,' for trade deals with other countries. However, a large swathe of people remained poor, with almost 35% of the population below the poverty line.
8. Hokian culture, in the form of pop music, TV shows and movies were wildly popular and in part, had helped fuel the younger population to agitate for a new constitution. After the new constitution, the Hoko government actively supported the Hokian entertainment industry and liberalized the sector and gave wide ranging trade benefits. The pull of Hokian culture was so strong that international tourism had risen from a few percentage points of GDP in 2000 to almost 20% in 2009. People from around the world followed Hokian reality shows, soaps, movies and celebrities. The national kho-kho league (The Hoko Kho kho League) had fanatical support from the populace,

with matches almost every Sunday. The Hokian entertainment industry had spawned three giant media conglomerates (with accompanying allegations of corruption, nepotism and favoritism).

9. The largest of the three, The Hoko National Pride Group, had revenues from a variety of sources, including sports franchises, TV revenues and Internet advertisement revenues from video podcasts. Their greatest resource, however, was the exclusive contract of megastar Jupiter Hestia. Hestia had a following of almost 68% of the Hokian population. Since 2005, Jupiter Hestia had hosted a popular daily video podcast where she spoke to a variety of people on the theme of instilling Hokian pride and nationalism. While covering symbols of national pride, she had also interviewed Dr. Ares on her show, who said that while he agreed that Hoko had a strong claim to the emerald being considered Hokian property, he did not believe they had a fitting place for housing such precious cultural heritage.
10. In December 2009, a local movement began in a small Hokian town protesting the price of bread. The issue was covered by Hestia's podcast, where she seemed to suggest that the government should acquiesce to people's demand for bread subsidies. Though it seemed like the protest had been controlled, a few days after the Hestia podcast, the issue of the price of bread snowballed into becoming a national issue and drew considerable strength from all segments of society, including military families and ex servicemen. Several public demonstrations for and against the government had led to widespread violence and a clampdown by the government.
11. The issue of the price of bread had now become inextricably linked with Hokian national pride. Hestia, in a *volte face* that some commentators found shocking, made repeated requests to her audience to cooperate with government authorities. It appeared that her requests were to no avail. With falling public support, General Rouge was widely seen as needing a distraction from domestic politics.
12. On 15 March 2010, Hestia had remarked on her podcast that, '*My people-pulse tells me that we need a distraction. Something, anything. Come on Hoko, lets do something else for a change. There are issues more important than bread.*' On 19 March 2010,

Hestia's changed her social handle to @getmecovfefe and sent a tweet, '*Been there too long #getmecovfefe*' The tweet quickly went viral in Hoko.

13. On 21 March 2010, it appears that General Rouge wanted to send a personal message to his son, but accidentally sent it as a tweet instead. The message/tweet read, '*Son, still at the national sec. meeting, looks like #getmecovfefe*' This tweet was widely published in all major newspapers and received significant media coverage. There was no official retraction. Government spokespersons said that personal messages were personal in nature and needed no official explanation.
14. On 25 March 2010, the Senate Assembly (Legislature) of Hoko passed a binding resolution, authorizing its military to take all necessary steps to protect the Hoko people and its culture. An extract of the official order dated 26 March 2010 by the Defence Minister to the Chief of Staff of the Hoko Army was leaked to the press and read as, "*The people have entrusted us with a mandate to reclaim our historic lands. Your mission, should you choose to accept it, is to restore our historic lands to the long suffering people of Hoko.*" The spokesperson of the Defence Minister, while decrying the leaking of government documents, denied the official order and also famously remarked, '*Controlling the imagination of the media is an impossible mission!*'
15. Soon thereafter, border skirmishes between Hoko and Hallbach began escalating. Despite attempts by the emissaries of the United Nations to broker peace, both countries broke ceasefire accords and a high intensity campaign began at the border. On 25 April 2010, Hallbach ceased to be in control of X and Y.
16. Hallbach claimed that X and Y were now in the hands of Hoko, while Hoko claimed that X and Y were under the control of a local militia that had been raised by Hallbachian government to suppress local dissent in X and Y. The local militia wore a mixture of uniforms and jackets, but almost all the soldiers sported red bandanas or hats with a slogan, '*MAKE US #COVFefe AGAIN.*' The militia were seen to be responsible for several reprehensible acts, including arson, looting, sexual offences and the summary execution of citizens of X and Y in 'Revolutionary Tribunals.'

17. One of the first buildings to be attacked was the State Museum in X. Dr. Ares had been held hostage in it by the militia for several days. In what was later described as an impossible feat, Dr. Ares managed to escape from the State Museum with a truck filled with priceless exhibits from the museum. The exhibits did not include *Covfefe*.
18. On the pain of being excluded from multilateral and bilateral trade agreements, several countries successfully managed to place Hoko under pressure. Though Hoko continued to deny having any role in the attacks on X and Y, it was clear that the increase in international pressure on Hoko was leading to a decrease in violence. Hoko promised to cooperate with Hallbach and reduce border tensions. A ceasefire agreement was entered into between the two countries on 05 May 2010, which was honoured by both countries.
19. By 10 May 2010, the mysterious militias in X and Y had retreated and Hallbachian forces regained control over X and Y. Apart from the death of citizens and loss of civilian infrastructure, Hallbach also counted the loss of its beloved *Covfefe*.
20. In their counterattack on X and Y, the Hallbachian forces had arrested a number of militia members, many of whom were found to be members of the Hoko special forces. The Hoko government disavowed these individuals. Hallbach decided to treat these militia members under their common law criminal system and Hallbachian authorities demanded that Hoko cooperate with the prosecution.
21. On 19 May 2010, Hestia gave an interview to a local Hoko newspaper. The article stated her as saying that a mysterious donor had given her what appeared to be the *Covfefe* emerald. Hestia announced that she had given it to the authorities for verification and if found to be in order, they would ensure that it reaches its rightful historical home.
22. On 20 May 2010, Hoko announced that in light of her cultural contributions to Hoko, Jupiter Hestia would be the next ambassador to the United Kingdom and would present her credentials in London on 28 May 2010. On 29 May 2010, Jupiter Hestia

was reported missing in London, while she was visiting the British Museum. Her last tweet had been, ‘*Seeing the Rosetta Stone. Spellbound.*’ It was suspected that persons of Hallbachian origin, with possible links to the Hallbachain Army, had abducted her. Hoko had lodged official protests with both the United Kingdom and Hallbach. While the United Kingdom had launched an investigation, Hallbach had denied any involvement in the disappearance of ‘*noted war criminal, Hestia.*’

23. On 04 June 2010, the Hallbachian Central Police announced that a mysterious donor had given them someone who appeared to be one Jupiter Hestia . The authorities were verifying her credentials and if found to be in order, would ensure that she reaches her rightful historical home. On 05 June 2010, Jupiter Hestia was produced before a judicial magistrate in the First Province of Hallbach and remanded to 15 days of police custody. Her ground of arrest had been offences including conspiracy, waging war against Hallbach, theft and abetment of offences including arson, looting, sexual offences and the summary execution of citizens of X and Y in ‘Revolutionary Tribunals.

24. On 01 August 2010, the Hallbach Federal Court passed an order in ‘*Re: X and Y,*’ directing that a Special Court be set up for the trial of all matters pertaining to the events in X and Y between 25 April 2010 and 10 May 2010, ‘and all related conspiracies.’ The Court also directed the Hallbach government to ensure that:
 - a. All cases relating to militia members be investigated and prosecuted to the full extent of law by the Special Court following the common law;

 - b. The matter relating to the theft of the *Covfefe* emerald be investigated and those responsible be prosecuted to the full extent of law by the Special Court;

 - c. The investigation be conducted by a Special Investigation Team comprising of military investigators and central police investigators, with ‘oversight’ being exercised by the Special Court.

The Federal Court also made it clear that any prayer for stay or impeding the progress in the investigation / trial can be made only before the Federal Court and no other Court could entertain the same. The Federal Court directed the Special Court pass the final judgment within 24 months, uninfluenced by the observations of the Federal Court. A Special Prosecutor was appointed by the Federal Court, who was given the liberty of appointing his own team of prosecutors and the power to direct the investigation.

25. The investigation and trial before the Special Court was concluded within 23 months. The final judgment and decision was passed on 31 July 2012, where the Special Court concluded as under:

- a. Seventeen militia members, all Hoko nationals, were convicted of conspiracy, murder, waging war against Hallbach, theft, violation of the Foreigners Act and miscellaneous offences of damage to property. They were all sentenced to death.
- b. Jupiter Hestia was convicted of incitement and conspiracy to commit murder, waging war against Hallbach, but acquitted for the charges of conspiracy to commit theft. She was sentenced to life imprisonment.
- c. Dr. Ares was acquitted for theft of the *Covfefe*.

26. The Hallbachian Government and the convicted militia both preferred appeals before the Federal Court of Hallbach. Jupiter Hestia filed a separate appeal challenging her conviction which was clubbed with these appeals. The following issues have been raised:

- (1) The entire investigation and trial pursuant to orders passed by the Hallbach Federal Court in *Re X and Y* was contrary to the process of law and thus the convictions must be set aside;
- (2) The arrest and subsequent prosecution of the Hokian officer Jupiter Hestia was contrary to law necessitating her conviction be set aside;

- (3) The decision of the Special Court to acquit the accused persons for allegations of theft was contrary to law and fact, and therefore must be reversed by the Federal Court.

Note to Counsel:

- 1. Common Law Principles are applicable.*
- 2. Parties may raise any other issue on the given facts to advance arguments upon.*

RELEVANT PROVISIONS

1. Hallbach Criminal Procedure Code:

Section 1:

This code is applicable to whole of territory of Hallbach. The present code may be made applicable to any territory which the Federal Government of Hallbach may notify in this regard.

Section 3:

When an offence is committed outside Hallbach against the any citizen of Hallbach -

(a) by a citizen of Hallbach, whether on the high seas or otherwise; or

(b) by a non citizen person on any ship or aircraft registered at Hallbach,

he or she may be dealt with in respect of such offence as if it had been committed at any place within Hallbach at which he may be found:

Notwithstanding anything to the contrary, no such offence will be tried in Hallbach except with the previous permission of the Federal Government.

Section 11:

No Court constituted under this Code shall try and convict any member of the armed forces of Hallbach for commission of any offence committed by him in discharge of his duty without the previous written sanction of the Director General of the Armed Forces.

Section 309:

In every criminal trial, the proceedings shall be on day-to-day basis until all witnesses present have been examined, unless the Court permits the adjournment beyond the following day with reasons to be recorded;

If the Court after taking cognizance of an offence, or commencement of trial, finds it necessary or advisable to postpone the commencement of, or adjourn, any inquiry or trial, it may, from time to time, for reasons to be recorded, postpone or adjourn the same on

such terms as it thinks fit, for such time as it considers reasonable, and may by a warrant remand the accused if in custody:

2. The Hallbach Armed Forces (Proceedings & Prosecution) Act:

Section 2:

The present Act is applicable to all persons enrolled under this Act and to any such other person who may be attached to the Armed Forces.

Section 3 [1]:

“Civil Offence” means an offence triable by a Court constituted under the Criminal Procedure Code or any such other Court the Senate may notify in this behalf.

Section 49:

49. Civil offences. Subject to the provisions of section 50, any person subject to this Act who at any place in or beyond Hallbach commits any civil offence shall be deemed to be guilty of an offence against this Act and, if charged therewith under this section, shall be liable to be tried by a court- martial and, on conviction, be punished with punishment provided against that offence.

Section 50:

50 Civil offences not triable by court- martial. A person subject to this Act who commits an offence of murder against a person not subject to military, naval or air force law, or of culpable homicide not amounting to murder against such a person or of rape in relation to such a person, shall not be deemed to be guilty of an offence against this Act and shall not be tried by a court- martial, unless he commits any of the said offences-

- (a) While on active service; or
- (b) at any place outside Hallbach; or
- (c) at a frontier post specified by the Senate by notification in this behalf.

3. Special Court Act, 2010:

Preamble:

This act is enacted for trial of all persons including armed officials for the crimes committed by them in war against Hallbach.

Section 10:

The Senate may by notification designate any Court as a Special Court for trial of offences committed by them in the war against Hallbach.

Section 11:

Notwithstanding, anything contained in the Criminal Procedure Code, an appeal against any order or judgment passed by the Special Court under this Act shall lie only to Federal Court of Hallbach.

Provided, that there shall be no appeal against any interlocutory order.

Section 33:

The Special Court is not strictly bound by the provisions of the Evidence Act and they may be applied as far as the Special Court deems fit.

4. Hallbach Penal Code:

Section 5:

Any person liable, by any Hallbach Law to be tried for an offence committed beyond Hallbach shall be dealt with according to the provisions of this Act for any offence committed beyond Hallbach in the same manner as if such act had been committed within Hallbach.

Section 400:

A person is guilty of theft, if he dishonestly appropriates property belonging to another with the intention of permanently depriving the other of it; and "thief" and "steal" shall be construed accordingly.

Punishment- Upto seven years imprisonment.

Section 420:

Whoever commits murder shall be punished with death, or imprisonment for life, and shall also be liable to fine.

Section 433:

Whosoever shall unlawfully and maliciously wound or inflict any grievous bodily harm upon any other person, either with or without any weapon or instrument, shall be guilty of causing grievous injury and shall be liable for a punishment upto ten years imprisonment.
