

Scenario

[1] Steve Wong is a horticulturist who developed a new variety of sunflower named Blithe that is neon yellow and fast-growing. He plans to make the Blithe sunflowers available for purchase across Australia. On 19 March 2018, Steve made an application under the *Plant Breeder's Rights Act 1994* (Cth) (the PBR Act) for a plant breeder's right (PBR) in respect of Blithe, and on 21 September 2018 a PBR was granted.

[2] On 10 October 2018, Mr. Wong planted Blithe sunflowers in his front yard. His next-door neighbour, Patsy White, told him that she had never seen sunflowers like them and asked where she could buy them. Mr. Wong explained that Blithe was a new variety he developed and has a PBR for, but is not yet available for sale.

[3] On 10 December 2018, Mr. Wong noticed that Ms. White had planted hundreds of Blithe sunflowers in her front yard (the Court takes this as a proven fact). It is unclear how she has obtained these sunflowers.

Shortly after, Ms White affixed the following sign on her front yard:

“Come visit Patsy’s whimsical estate. Gold coin donation encouraged”.

People would arrive at Ms. White’s front yard, pay her money, and many of them take photos in front of the sunflowers. Some of them do not pay any amount of money and are still admitted to the property, although the majority do. Besides the Blithe sunflowers, Ms. White’s front yard has a few water features but nothing that differentiates it from the other houses, aside from Mr. Wong’s property, in that neighbourhood besides the numerous Blithe sunflowers.

[4] Mr. Wong claims that Ms. White has propagated and planted Blithe sunflowers without his consent or license and submits that this constitutes a contravention of s 53(1)(a) of the PBR Act. Mr. Wong commenced an action in the Federal Circuit Court, seeking injunctive relief and delivery of the Blithe sunflowers in Ms. White’s possession. Ms White concedes that she did propagate the Blithe sunflowers but argues she planted them for personal enjoyment.

[5] Through the discovery process, an email is uncovered where Ms. White mentions “I always wanted a side hustle, and who knew letting people into my property would be it?”. Further emails also reveal that Ms. White describes this project as her “business”. Additionally, it is shown that Ms. White’s front yard is popular enough that she is receiving \$2000 a month from the gold coin donations.

All parties, and the Court, accept that Ms. White has propagated the Blithe sunflower seeds in contravention of s 53(1)(a) of the PBR Act. The Court is asking for submissions on whether Ms. White’s actions fall under the s 16(a) exemption of the PBR Act.

Students are not expected to refer to any law beyond the PBR Act and rules of statutory interpretation. Students will be informed by the relevant coach as to whether they are making arguments for Mr. Wong or Ms. White. The Court is allocating 5 minutes for oral submissions per party – no written submissions necessary.