



HIGH COURT OF AUSTRALIA

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Details of Filing

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IN THE HIGH COURT OF AUSTRALIA
HOBART REGISTRY

No. **H2 of 2020**

BETWEEN:

CHAUNCEY AARON BELL
Appellant

and

STATE OF TASMANIA
Respondent

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ATTORNEY-GENERAL FOR QUEENSLAND (INTERVENING)
OUTLINE OF ORAL SUBMISSIONS

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PART I: Internet publication

1. This outline of oral submissions is in a form suitable for publication on the Internet.

PART II: Outline

2. The Attorney-General for Queensland relies on her written submissions and supplements them in relation to the following issues.

30 **Proper interpretation of s 24 of the Queensland Criminal Code**

3. Section 24 materially provides that a person is not criminally responsible for the act or omission to any greater extent than if the real state of things had been such as the person believed to exist.

40 4. Section 24 of the Queensland Code forms part of a code intended to replace the common law (*Anderson v Nystrom* [1941] St R Qld 56 FC, 69 (**JBA Vol. 6, 1219**), citing *Brennan v R* (1936) 55 CLR 253, 263). Its language should be construed according to its natural meaning and without any presumption that it was intended to do no more than restate the existing law (*Namoa v R* [2021] HCA 13, 9 [11] (Gleeson J))

Filed on behalf of the Attorney-General for
the State of Queensland (Intervening)

5 October 2021

(**SJBA Vol. 2, 202**). Ultimately it is the language of the statute that is controlling (*CTM v The Queen* (2008) 236 CLR 440, 446 (Gleeson CJ, Gummow, Crennan and Kiefel JJ) (**JBA Vol.3, p 272**).

Section 24 and the common law defence

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5. The mistake of fact in the Queensland Code is not the same as the common law defence. Section 24 has been interpreted as relieving an accused of criminal responsibility in relation to a primary offence, notwithstanding that the facts believed by the accused to exist involve a simpliciter offence (*Anderson v Nystrom* [1941] St R Qd 56 FC, 70 (Philp J); 62 (E A Douglas J agreeing) (**JBA Vol. 6, 1225; 1232 - 1233**); *Loveday v Ayre and Ayre* [1955] St. R. Qd 264 FC, 271 (Stanley J) (**JBA Vol. 6, 1413**)) or an unlawful act (*R v Gould and Barnes* (1960) Qd R 283 CCA, 289 (Mansfield CJ); 290-291 (Philp J) (**Suppl. JBA Vol. 3, 592; 593-594**); **Review of Commonwealth Criminal Law, Interim Report July 1990** p 69 para 7.9 (**Suppl. JBA Vol. 4, 769**); **AG Qld, [6], [17]-[19], fn 4, 31-33**).
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6. This interpretation accords with the natural meaning of the words of s 24. The meaning is clear and unambiguous. It is unnecessary to have recourse to the common law to interpret s 24 (*Pickett v Western Australia* (2020) 94 ALJR 629, 635-636 [22]-[24]; **JBA Vol. 4, p 858-9**). It is not permissible to resort to the antecedent common law, nor is it permissible to resort to extrinsic materials, such as the draft Code and Sir Samuel Griffith's explanation of the draft Code, in order to create an ambiguity (*Mellifont v Attorney-General* (Q) (1991) 173 CLR 289, 309 per Mason CJ, Deane, Dawson, Gaudron and McHugh JJ [**not in JBA**]).
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7. The statement by Dixon J (as his Honour then was) (*Thomas v The King* (1937) 59 CLR 279, 305-6; **JBA Vol. 5, 1008-9**) that ss 22 and 24 of the Queensland Code and ss 12 and 14 of the Tasmanian Code 'are in the same terms', was not accurate.
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8. Section 24 would not have resulted in any different outcome in *Thomas* because, like *R v Tolson* and *R v Wheat and Stocks* (1921) 2 K.B. 119, the offence was bigamy. There was no simpliciter or secondary offence. The statement of Dixon J that s 24 stated the common law 'with complete accuracy' was obiter, and its width has subsequently been questioned (**AG Qld [60]**).

Section 24 and the Tasmanian Code

9. The mistake of fact defence in the Queensland Code is not the same as in the Tasmanian Code.
10. Both Codes supplant the doctrine of *mens rea* (Qld Code, s 23; *Anderson v Nystrom* [1941] St. R. Qd. 56, 65, 69; **JBA Vol. 6, 1228, 1232**; s 13(1) Tasmanian Code, *Vallance v R* (1961) 108 CLR 56, 78; **JBA Vol. 5, 1137**).
11. The Tasmanian Code expressly preserves common law defences, and the common law, to the extent that the Code does not specify the ingredients of an offence (*Criminal Code Act 1924* (Tas) s 8; *Vallance*, 67; **JBA Vol. 5, 1126**; cf *Criminal Code Act 1899* (Qld) s 5). In Tasmania it has been accepted that principles relating to content and application of mistake of fact must be ascertained from the common law (*R v Martin* (1963) Tas. S.R. 103, 110 (Burbury CJ) **JBA Vol. 6, 1489**).
12. In contrast to the Queensland Code, the approach to interpreting the Tasmanian Code was described by Windeyer J in *Vallance v R* (1961) 108 CLR 56, 76 (**JBA Vol. 5, 1135**), his Honour stating that Ch IV (Criminal Responsibility) is written with the old writing still discernible behind.

Dated: 5 October 2021.



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