

## 84. Intentional Intoxication: s 28

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### 84.1 Legislation

[Last reviewed: February 2025]

*Criminal Code*

[Section 28](#) – Intoxication

### 84.2 Commentary

[Last reviewed: February 2025]

Section 28(2) makes it clear that s 27 does not apply to cases where the Defendant has to any extent intentionally become intoxicated or stupefied (see also *R v Kusu* [1981] Qd R 136, [141-142]). Intentional intoxication may only relieve a Defendant of criminal responsibility for offences that involve proof of a specific intent, where the prosecution cannot prove beyond reasonable doubt that the Defendant formed the requisite intent (see *Dearnley v R* [1947] St R Qd 51, [61-64]). In such cases, the jury should be directed that intoxication of the Defendant should be taken into account in determining whether the prosecution has proved the requisite specific intent beyond reasonable doubt. As Gibbs CJ explained in *Viro v R* (1978) 141 CLR 88, [112]:

*'In a case where there is evidence fit to be considered by a jury that the accused was intoxicated as a result of the consumption of drink or drugs, it is not enough to tell the jury that the Crown must prove beyond reasonable doubt that the accused had in fact formed the requisite special intent. They should also be told that the fact that the accused was intoxicated, whether by drink or drugs or by a combination of both, may be regarded for the purpose of ascertaining whether the special intent in fact existed. It should be explained that evidence that the accused was intoxicated will not in itself entitle him to an acquittal, because a person when intoxicated may form the necessary intent, and one who has formed the intent does not escape responsibility because his intoxication has diminished his power to resist the temptation to carry it out. However, the jury should be told that if, because of the evidence as to the effect of the intoxication or otherwise, they are not satisfied that the accused did in fact have the necessary intent, they must acquit of the crime which involves that intent.'*

In *R v Middleton* [2003] QCA 431 the Court of Appeal noted that the purpose of s 28(3) is better served by focusing only on the question of whether the Defendant did in fact form the intention rather than directing attention to whether the Defendant had the capacity to form the intention, any concern about capacity being subsumed in that enquiry (see also *R v Batchelor* [2003] QCA 246).

In *R v Buckley*, Supreme Court Brisbane, 7 April 1982, Connolly J held that arson is an offence involving a specific intention to cause a specific result having regard to the interpretation of 'wilfully' in *R v Lockwood, ex parte A-G*. In *R v Eustance* [\[2009\] QCA 28](#) the Court of Appeal held that the trial judge erred in refusing to direct the jury with respect to intoxication on a charge of arson where the prosecution case was that the Defendant had an intention to set fire to the property (see also *The Queen v Timothy Noel Buckley* (Supreme Court Brisbane 7 April 1982)).

Where the prosecution cannot prove the specific intent in question because of intoxication, the Defendant may still be found guilty of an offence for which proof of a specific intent is not required. For example, where proof of intent to kill on a charge of murder is negated due to intoxication, a defendant may still be found guilty of manslaughter.

### 84.3 Suggested Direction

[Last reviewed: February 2025]

*Intentional intoxication where charge does not involve a specific intent*

**There is evidence that at the time when [he/she] did the things which constitute the charge, the Defendant was affected by alcohol [or drugs]. Intoxication [substitute 'stupefaction' where appropriate] does not relieve a person of responsibility for committing a crime. It may help you when you are considering the state of the Defendant's memory of the events surrounding the incident which has given rise to this charge. It may offer some explanation for [his/her] conduct. It does not entitle [him/her] to an acquittal.**

*Intentional intoxication where charge does involve a specific intent*

**A specific intent is an element of the offence of [insert offence], namely an intent to [set out the specific intent/s involved]. The prosecution must prove beyond reasonable doubt that the Defendant had in fact formed the requisite specific intent.**

**There is evidence that the Defendant was intoxicated when the incident occurred. This evidence about intoxication is relevant to the issue of intent. When an intention to cause a specific result is an element of an offence, intoxication, whether complete or partial, and whether intentional or unintentional, may be regarded for the purpose of ascertaining whether such an intention in fact existed.**

**The fact that the Defendant was intoxicated [whether by alcohol or drugs or a combination of both] may be regarded for the purpose of ascertaining whether the special intent in fact existed.**

**If because of the evidence as to the effect of the intoxication or otherwise, you are not satisfied beyond reasonable doubt that the Defendant did in fact form the necessary intent [here describe essence of necessary intent], you must find [him/her] not guilty of [insert description of offence where more than one is charged or available on the indictment].**

**The evidence that the Defendant was intoxicated will not itself entitle [him/her] to a verdict of not guilty, because a person when intoxicated may form the necessary intent, and one who has formed the intent does not escape responsibility because intoxication has diminished [his/her] power to resist the temptation to carry it out.**

**However, if because of the evidence as to the effect of the intoxication or otherwise, you are not satisfied beyond reasonable doubt that the Defendant did in fact form the necessary intent, you must find the Defendant not guilty of the offence which involves that intent.**

It is for the prosecution to satisfy you beyond reasonable doubt that, although intoxicated, the Defendant did in fact have the requisite intention. If the prosecution fails to satisfy you of that beyond reasonable doubt, you must find the Defendant not guilty of the charge that [involves that specific intention].

**The essence of the evidence you need to consider in relation to this issue of intent is, in summary, [here set out evidence].**

(In an appropriate case, add the following paragraph): **It is open to you, if you are not satisfied beyond reasonable doubt that the requisite specific intent existed at the time, to consider the offence of [set out the offence], which does not involve a specific intent as an element. You may convict the Defendant of that offence, if you are satisfied beyond reasonable doubt that the elements of that offence have been established. [Outline and explain the elements of that offence].**