

## 76. Claim of Right: s 22(2)

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### 76.1 Legislation

[Last reviewed: February 2025]

*Criminal Code*

[Section 22](#) - Ignorance of the law—bona fide claim of right

### 76.2 Commentary

[Last reviewed: February 2025]

Section 22(2) removes the criminal responsibility of a defendant where an act, done or omitted to be done, meets three criteria, being:

- (1) with respect to property;
- (2) in the exercise of an honest claim of right; and
- (3) without intention to defraud.

The prosecution has the burden of disproving s 22(2) beyond reasonable doubt (*R v Perrin* [\[2018\] 2 Qd R 174](#), 187).

The offences created by ss 488 (forgery/uttering) or 408C (fraud) of the Code include elements that the Defendant's relevant act was done with an intention to defraud (s 488) or dishonesty (s 408C). For the Crown to exclude s 22(2), the Crown must prove an intention to defraud – in other words, prove dishonesty. Therefore, proof of one eliminates proof of the other. There is no need to direct the jury about s 22(2) in such a case. Intention to defraud is a subjective state of mind of the defendant, but to be assessed as dishonest according to the standards of ordinary, decent people – an objective test (see *R v Perrin* [\[2018\] 2 Qd R 174](#); see also *Peters v The Queen* [\(1998\) 192 CLR 493](#)).

A defendant acts in the exercise of an honest claim of right (in respect of the property the subject of the charge) if they honestly believe themselves to be entitled to do what they are doing in relation to that property (see *R v Pollard* [\[1962\] QWN 13](#), [29]; *R v Waine* [\[2006\] 1 Qd R 458](#), [27]). An honest claim of right may stem from a belief in a right the law does not recognize (*R v Williams* [\[1988\] 1 Qd R 289](#), [295]). In *R v Mill* [\[2007\] QCA 150](#), the Court noted at [81] with approval the suggested direction and its focus upon the belief of the accused person to do the act the subject of the charge.

### 76.3 Suggested Direction

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**Under our law, a person is not criminally responsible for an offence relating to property, if what [he/she] did [or omitted to do] with respect to the property was done [or omitted to be done] in the exercise of an honest claim of right and without intention to defraud. [Offence charged] is an offence relating to property.**

**For the excuse of honest claim of right to apply, the Defendant must believe that [he/she] has a legal entitlement to the property the subject of the charge [as, for example, its owner].**

**It is not enough that the Defendant believed that [he/she] was entitled to do what they did.**

**Also, for the excuse to apply, the Defendant must act without an intention to defraud.**

**‘To defraud’ in this context means to do [or omit to do] something dishonestly, so the requirement that the claim of right be honest and the requirement of the absence of an intention to defraud are really two ways of saying that the Defendant must have honestly believed [himself/herself] to be entitled to do what [he/she] did [or omitted to do].**

**Dishonesty – or an intention to defraud – is a subjective state of mind, to be assessed according to the standards of ordinary decent people.**

**Remember the onus of proof. The Defendant does not have to prove that [he/she] made an honest claim of right without intention to defraud. The prosecution must satisfy you beyond reasonable doubt that The Defendant did not do so.**

**So, if the prosecution has failed to satisfy you beyond reasonable doubt that when the Defendant [details of act or omission (e.g., took the suitcase owned by X)] [he/she] did not honestly believe [he/she] was entitled to [act or omission, (e.g., take it)], you must find the Defendant not guilty.**