Driving Whilst Disqualified

Drive Disqualified – Drive Suspended – s54 Road Transport Act 2013

Drive Disqualified is a serious offence in the state of New South Wales. A first offence results in an automatic one year disqualification from driving and up to 18 months in prison. A second offence results in an automatic two year disqualification plus up to two years in prison.

It is possible to defeat a charge of Drive Disqualified or Drive Suspended by asserting an an '*Honest and Reasonable Mistake of Fact*' (HRMF) as to the validity of your Driver Licence (DL). This article will explain in simple terms when the defence applies and the distinction between a question of law and a question of fact.

Ignorance of the Law

There is an ancient legal maxim that says 'Ignorance of the law does not excuse him'. This means that everyone is presumed to know the law and there is no point in a defendant saying he didn't know certain conduct was an offence.

For many years a claim of HRMF was met with an assertion from the prosecution that the validity of your DL is a question of law. It would then follow that a mistaken belief as to its currency would be a mistake of law and the maxim would apply.

However, the Supreme Court of New South Wales determined in *El Hassan v DPP*[1] that the validity of a DL is a question of fact rather than law and the HRMF defence is available specifically for Drive Disqualified but also for crimes of strict liability in general.

Mistake of Fact or Mistake of Law?

Courts distinguish between questions of law and questions of fact. The law applies to everyone but a fact, for these purposes, is something that relates only to a particular person or group of people.

The law requires all drivers to have a valid Driver Licence and there is no point in a defendant claiming he was unaware of this. However, the validity of the defendant's DL at a particular time is a question of fact as it relates only to the defendant.

The defendant does not claim he didn't realise he was required to have a valid DL. This would be a mistake of law. Rather, he claims a mistaken belief as to the validity of his DL on a particular day.

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1 El Hassan v NSW DPP & Anor [2000] NSWCA 330

Honest & Reasonable

The bad news for Mr El Hassan is that his appeal failed. He had claimed that he believed his DL had been suspended for fines and that if he paid them, he would be allowed to drive. The Supreme Court found that, though the HRMF defence was available to him, his belief was neither honest nor reasonable given his previous offending and his dealings with the Roads & Maritime Service.

So when might a mistaken belief be both honest and reasonable?

'I didn't get the letter advising of the suspension'

Roads & Maritime Services have to prove only that they sent the letter to the address on the driver licence register.[2] It is up to every driver to ensure their details are up to date. So simply moving house isn't good enough. The defendant would have to produce evidence to show that the mail was stolen, they were living somewhere else temporarily or the letter was confusing in some way.

'I set up a payment plan with the State Debt Recovery Office'

If your DL is suspended for unpaid fines, the suspension will be lifted when you pay the fines or set up a payment plan. Defendants with multiple fines often pay some but not all of the fines. It only takes one outstanding find to lead to a suspension. Another common situation is that a defendant sets up a payment plan but then incurs an additional fine which is not covered by the existing payment plan.

Drivers should be aware that every call to the State Debt Recovery Office is noted on their computer system.

'I thought the suspension had finished'

Sometimes the suspension letter can be confusing or the original suspension period is subsequently extended. This explanation turns entirely on the documents you received or the conversations you had with SDRO.

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2 Clause 6 Road Transport (General) Regulation 2013