

The Queen v Tang [2008] HCA 39 (28 August 2008)

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Introduction

The appeal to the High Court in *The Queen v Tang* (*Tang*)¹ concerned the ‘first convictions in Australia’ for ‘slavery offences’ contrary to s 270.3(1)(a) of the *Criminal Code* (Cth) (‘the Criminal Code’).² In upholding the convictions, the High Court provided insight into how international law relating to slavery will be interpreted and applied in Australia. The approach the majority adopted is in conformity with international law and, in some respects, is an improvement on the existing jurisprudence. However, while these proceedings were pending, a lesser offence of ‘debt bondage’ was added as s 271.8 of the Criminal Code, which will have an effect on future decisions.

I. The Factual Background

The charges against Tang (‘the respondent’) related to her treatment of five women (‘the complainants’) who came voluntarily to Australia and worked in the respondent’s licensed brothel.³

A. The ‘Purchase’ of the Complainants

The complainants (Thai nationals, who had all previously worked in the sex industry) were recruited in Thailand.⁴ When each complainant arrived in Australia, her Thai recruiters were paid \$20,000 by a ‘syndicate’⁵. The respondent held a 70 per cent share in the syndicate which ‘purchased’ four of the complainants.⁶ The respondent was not a member of the syndicate that ‘purchased’ the fifth complainant (as that complainant originally worked in another brothel).⁷ At trial, DS (originally a co-accused) described the \$20,000 as ‘the money for purchasing women from Thailand to come here’.⁸

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¹ *The Queen v Tang* (2008) 237 CLR 1 (*Tang*).

² *Ibid* [61].

³ *Ibid* [6] and [166]. The prosecution accepted at the outset that the complainants came to Australia voluntarily.

⁴ *Ibid* [6].

⁵ *Ibid* [8].

⁶ *Ibid* [8].

⁷ *Ibid* [13].

⁸ *Ibid* [8].

B. The Debts Incurred by the Complainants

Each complainant acknowledged a debt of approximately \$45,000 to their 'purchasing' syndicate.⁹ According to the trial Judge, this amount was a notional liability, taking into account the \$20,000 paid to the recruiters, the costs of travel, the complainant's living expenses and a 'profit margin'.¹⁰ Customers of the complainants were charged \$110 and a complainant's debt was reduced by \$50 per customer.¹¹ The complainants came to Australia on the understanding that once they paid their 'debt', they would be able to earn money on their own account as prostitutes.¹²

Gleeson CJ summarised that 'while under contract, each complainant was to work in the respondent's brothel in Melbourne six days per week, serving up to 900 customers over a period of four to six months'.¹³

C. The Complainants' Working Conditions

The trial judge was satisfied that the complainants were financially deprived and vulnerable upon arriving in Australia.¹⁴ They entered Australia on illegally obtained tourist visas, had very little (if any) money, spoke little (if any) English and knew no-one.¹⁵ During the term of their contracts, the complainants' passports and return airfares were held by the respondent.¹⁶ While the complainants were well provided for and were not kept under 'lock and key', the trial judge found they were effectively restricted to the brothel premises.¹⁷

Two of the complainants worked off their debts within six months and decided to continue working at the respondent's brothel (without the above restrictions).¹⁸

2. The Case in the Lower Courts

At trial before a jury, the respondent was convicted under s 270.3(1)(a) of the Criminal Code of intentionally possessing a slave and of intentionally exercising over a slave a power attaching to the right of ownership (namely, the power of use).¹⁹

⁹ Ibid [10].

¹⁰ Ibid [12].

¹¹ Ibid [9] and [10].

¹² Ibid [11].

¹³ Ibid [14].

¹⁴ Ibid [15].

¹⁵ Ibid [11] and [15].

¹⁶ Ibid [16].

¹⁷ Ibid. The relevant circumstances included 'the hours of work involved, as well as control by way of fear of detection from immigration authorities, fear of visa offences, advice to be aware of immigration authorities, advice to tell false stories to immigration authorities if apprehended, and instructions not to leave their accommodation without the respondent, DS or the manager of the brothel'.

¹⁸ Ibid [17] and [79(8)].

The Court of Appeal²⁰ upheld an appeal on the basis of the inadequacy of the trial Judge's directions to the jury, quashed the convictions and ordered a new trial.²¹

3. The Proceedings before the High Court

The High Court granted the prosecution special leave to appeal the Court of Appeal's decision.²² The respondent sought special leave to cross-appeal on three grounds, seeking the substitution of verdicts of acquittal.²³ Although the respondent was granted special leave on two grounds,²⁴ the cross-appeal was dismissed.²⁵ The prosecution's appeal was allowed and the respondent's convictions restored.²⁶

The principal judgment was delivered by Gleeson CJ. Hayne J delivered a separate judgement agreeing with Gleeson CJ. Gummow, Heydon, Crennan and Kiefel JJ agreed with Gleeson CJ and Hayne J. Kirby J generally agreed in a separate judgment, but dissented concerning the trial judge's directions to the jury.²⁷

This note discusses, first, the meaning of s 270.3(1)(a) (the second ground of cross-appeal) and, secondly, the adequacy of the trial judge's directions to the jury (the ground of appeal).

A. The Relevant Legislation

Division 270 of the Criminal Code states:

270.1 Definition of *slavery*

For the purposes of this Division, *slavery* is the condition of a person over whom any or all of the powers attaching to the right of ownership are exercised, including where such a condition results from a debt or contract made by the person.

270.2 Slavery is unlawful

¹⁹ Ibid [1].

²⁰ *R v Wei Tang* (2007) 16 VR 454.

²¹ *Tang* [1] and [2].

²² Ibid [63].

²³ Ibid [63].

²⁴ Ibid [57].

²⁵ Ibid [57].

²⁶ Ibid [57].

²⁷ Ibid [64], [70] and [131].

Slavery remains unlawful and its abolition is maintained, despite the repeal by the *Criminal Code Amendment (Slavery and Sexual Servitude) Act 1999* of Imperial Acts relating to slavery.

270.3 Slavery offences

(1) A person who, whether within or outside Australia, intentionally:

- (a) possesses a slave or exercises over a slave any of the other powers attaching to the right of ownership; or...

1. The Meaning of s 270.3(1)(a)

In issue was whether s 270.3(1)(a) is confined to situations akin to chattel slavery.²⁸ ‘Chattel slavery’ refers to the *legal* capacity of a person to treat another as an article of possession.²⁹

Gleeson CJ

The Meaning of ‘Slavery’

Gleeson CJ noted that the definition of ‘slavery’ in s 270.1 is derived from the 1926 Slavery Convention³⁰ (‘the Convention’),³¹ which provides:

Slavery is the status or condition of a person over whom any or all of the powers attaching to the right of ownership are exercised³²

Gleeson CJ noted that although the travaux préparatoires of the Convention are ‘not especially illuminating’ as to the meaning of the above definition, certain observations can be made about the Convention’s text, context and purpose.³³ First, he noted that, in 1926, legal ownership of another person was already impossible in many of the State parties (that is, the legal status of slavery did not exist).³⁴ Secondly, the Convention refers to the ‘status or condition’ of slavery.³⁵ The Convention addressed the ‘condition’ of slavery so as to cover

²⁸ Ibid [20].

²⁹ Ibid [27].

³⁰ *International Convention to Suppress the Slave Trade and Slavery*, opened for signature 25 September 1926, 60 LNTS 254 (entered into force 9 March 1927) (‘the Convention’).

³¹ *Tang* [21].

³² The Convention, art 1(1). This definition was taken up in art 7 of the *1956 Supplementary Convention on the Abolition of Slavery, the Slave Trade, and Institutions and Practices similar to Slavery*, 266 UNTS 3 (the ‘Supplementary Slavery Convention’) and art 7(2)(c) of the Rome Statute, 2187 UNTS 90; *Tang* [21] and [24].

³³ *Tang* [25].

³⁴ Ibid [25].

³⁵ Ibid [25] (emphasis added).

slavery de facto, as well as the de jure status of slavery.³⁶ Gleeson CJ stated that this is 'hardly surprising' given that the aim of the Convention was to secure the complete suppression of slavery 'in *all* its forms'.³⁷ He noted that the definition in the Criminal Code only refers to the 'condition' of slavery as, under Australian law, legal ownership of a person is impossible.³⁸ Thirdly, Gleeson CJ noted that the definition of slavery turns on the exercise of '*any* or all' of the powers attaching to ownership over a person.³⁹ He therefore concluded that while chattel slavery falls within the Convention definition, it would be inconsistent with the purpose, context and text of the Convention to read the definition as limited to chattel slavery.⁴⁰

Gleeson CJ referred to a European Court of Human Rights case, *Siliadin v France*.⁴¹ He noted that that Court seemed to be of the view that the Convention only dealt with the 'genuine right of legal ownership' (that is, the legal status of slavery).⁴² Gleeson CJ rationalised that Court's approach stating it 'would not have been a complete answer if there had been a serious issue of slavery in the case'.⁴³

Gleeson CJ also referred to a decision of the Trial Chamber⁴⁴ and Appeals Chamber⁴⁵ of the International Criminal Tribunal for the Former Yugoslavia, *Prosecutor v Kunarac*. Both Chambers, like Gleeson CJ, adopted the view that 'enslavement' (a crime against humanity under customary international law)⁴⁶ is not limited to chattel slavery.⁴⁷ However, while Gleeson CJ held that it would be incompatible with the text, context and purpose of the Convention to read the definition of slavery in the Convention as limited to chattel slavery,⁴⁸ the Appeals Chamber was of the view that slavery, as defined in the Convention, was *originally* limited to chattel slavery, but that, since 1926, the definition of slavery had broadened.⁴⁹ Gleeson CJ's interpretation should be preferred. His reasoning (outlined above) is persuasive and furthermore, his interpretation is supported by a report on slavery by the Office of the United Nations High Commissioner for Human Rights which states

³⁶ Ibid [25].

³⁷ Ibid [25], quoting the Convention art 2 (emphasis added).

³⁸ Ibid [20] and [33], stating that this is confirmed in s 270.2 of the Criminal Code.

³⁹ Ibid [25] (emphasis added).

⁴⁰ Ibid [27].

⁴¹ *Siliadin v France* (2006) 43 EHRR 16 ('*Siliadin*').

⁴² *Tang* [30], quoting *Siliadin* [122].

⁴³ Ibid [31].

⁴⁴ *Prosecutor v Kunarac (Trial Judgment)* (ICTY, Trial Chamber, Case No IT-96-23-T and IT-96-23/1-T, 22 February 2001) ('Trial Chamber').

⁴⁵ *Kunarac v Prosecutor (Appeal Judgment)* (ICTY, Appeals Chamber, Case No IT-96-23 and IT-96-23/1-A, 12 June 2002) ('Appeals Chamber').

⁴⁶ Trial Chamber [539].

⁴⁷ *Tang* [28].

⁴⁸ Ibid [27].

⁴⁹ Appeals Chamber [117].

that '[a]rguably, the use of the phrase "any or all of the powers attaching to the right of ownership"... was intended to give a more expansive and comprehensive definition of slavery'.⁵⁰

The Meaning of 'Powers Attaching to the Right of Ownership'

The Trial Chamber and Appeals Chamber identified the following factors as being indicative of slavery:

- control of movement;
- control of physical environment;
- psychological control;
- measures taken to prevent or deter escape;
- force, threat of force or coercion;
- duration;
- assertion of exclusivity;
- subjection to cruel treatment and abuse
- control of sexuality; and
- forced labour.⁵¹

Gleeson CJ concluded that these factors are relevant to the application of s 270.3(1)(a).⁵² Furthermore, he accepted the Appeal Chamber's view (contra the Trial Chamber) that while consent is a factor to be considered, the consent of a person is not inconsistent with them being a 'slave'.⁵³

While both Chambers identified the above indicative factors, neither explicitly addressed what *powers* attaching to the right of ownership had been exercised by the two accused.⁵⁴ In contrast, Gleeson CJ noted that the definition of slavery turns on the exercise of powers over a person,⁵⁵ and his inquiry focused on this. In relation to the 'condition' of slavery, he identified the relevant powers as being those of the kind and extent that would

⁵⁰ David Weissbrodt and Anti-Slavery International, United Nations High Commissioner for Human Rights, *Abolishing Slavery and its Contemporary Forms*, UN Doc HR/PUB/02/4 (2002).

⁵¹ Trial Chamber [543], Appeals Chamber [117-119].

⁵² *Tang* [35].

⁵³ *Ibid* [35], referring to Trial Chamber [543] and Appeals Chamber [120].

⁵⁴ Both Chambers stated that enslavement consists of 'the exercise of any or all of the powers attaching to the right of ownership over a person' Trial Chamber [539], affirmed by Appeals Chamber [117]-[118].

⁵⁵ *Tang* [25].

attach to the right of ownership if the legal status of slavery was possible.⁵⁶ Gleeson CJ concluded that such powers exercised by the respondent were the power to:

- make the complainants objects of purchase;
- use the complainants and their labour in a substantially unrestricted manner;
- control and restrict the complainants' movements; and
- use the complainants' services without commensurate compensation.⁵⁷

He stated that for the latter three powers, their extent, as well as their nature, was relevant.⁵⁸ The first, second and fourth of the above powers were taken from a 1953 Memorandum of the Secretary-General, to which Gleeson CJ referred.⁵⁹

Gleeson CJ concluded that '[t]he evidence could be understood as showing that [the respondents] had been bought and paid for, and that their commodification explained the conditions of control and exploitation under which they were living and working'.⁶⁰

Hayne J

Hayne J agreed with Gleeson CJ, but gave additional reasons on this issue.

The Practical Approach to s 270.3(1)(a)

Hayne J addressed how the abstract ideas of 'possession' and 'ownership' are to be given practical application. First, he noted s 270.3(1)(a) appears to present two questions—did the accused intentionally exercise some power attaching to the right of ownership over the complainant *and* was the complainant a slave?⁶¹ Hayne J observed that, as 'slave' is defined as the condition of a person over whom any of the powers attaching to the right of ownership are exercised, the second question is superfluous.⁶²

⁵⁶ Ibid [26] and [32].

⁵⁷ Ibid [26] and [50]. Examples of powers listed in the *Elements of War Crimes under the Rome Statute* for the war crime of sexual slavery are 'purchasing, selling, lending or bartering such a person or persons, or by imposing on them a similar deprivation of liberty' - Dörmann, K, *Elements of War Crimes under the Rome Statute of the International Criminal Court - sources and commentary*, ICRC and Cambridge University Press, 2003, at 325. A footnote provides that 'such deprivation of liberty may, in some circumstances, include exacting forced labour or otherwise reducing a person to servile status as defined in the [Supplementary Slavery Convention]', at 326.

⁵⁸ Ibid [50].

⁵⁹ Ibid [26], referring to United Nations Economic and Social Council, *Slavery, the Slave Trade, and Other Forms of Servitude*, Report of the Secretary-General, UN Doc E/2357, (1953) at 28.

⁶⁰ Ibid [50].

⁶¹ Ibid [144].

⁶² Ibid [145].

Secondly, he noted that the Criminal Code does not identify what the ‘*other powers*’, besides possession, attaching to the right of ownership, are.⁶³ However, Hayne J was of the view that ‘the right to possess a subject matter, coupled with a power to carve out and dispose of subsidiary possessory rights, is an important element in that aggregation of powers’.⁶⁴

Were the Complainants Possessed and used as Slaves?

Hayne J stated there were two aspects of the evidence critical to answering the above question in the affirmative.⁶⁵

1. The evidence that the complainants came to Australia following a transaction described as a ‘purchase’.⁶⁶

Hayne J noted that at trial and in the Court of Appeal there was much debate as to whether the respondent ‘bought’ the complainants or whether the respondent bought contracts under which the complainants agreed to provide services.⁶⁷ Hayne J stated that this distinction was flawed and of no assistance for resolving the legal rights and duties of the parties, as the former alternative is legally impossible.⁶⁸

2. The evidence of how the complainants were treated in Australia, particularly their living and working conditions.⁶⁹

Against the above evidence was the fact that the complainants came to Australia voluntarily (although Hayne J doubted whether this had occurred).⁷⁰ Hayne J was of the view this did not preclude the conclusion that the complainants were possessed and used by the respondents.⁷¹ He stated that even if the evidence was taken at its highest, the jury could still have concluded the complainants retained no freedom once in Australia.⁷²

Hayne J concluded that the evidence was capable of demonstrating that when the respondent took up a ‘share’ in the first four complainants, she bought them as if they

⁶³ Ibid [146] (emphasis in original).

⁶⁴ Ibid [147] l. Additionally, after considering United States case law, Hayne J stated that assistance can be obtained by considering the antithesis of slavery; freedom - [149] and [155]. However, after discussing the issue at length, he noted that merely conducting such an inquiry would not answer the question posed by s 270.3(1)(a) - [156]-[159].

⁶⁵ Ibid [160].

⁶⁶ Ibid [160] and [165].

⁶⁷ Ibid [162].

⁶⁸ Ibid.

⁶⁹ Ibid [160] and [165]. These conditions are described above under ‘factual background’.

⁷⁰ Ibid [160] and [167].

⁷¹ Ibid [166].

⁷² Ibid.

were articles of trade, and thereafter possessed and used them.⁷³ Furthermore, he concluded that the evidence was capable of demonstrating that in accepting the fifth complainant as a worker in her brothel, on terms that payments for her services were to be made to her ‘purchasing’ syndicate, the respondent possessed and used the fifth complainant as if she were an article of trade that others had bought.⁷⁴ That is, ‘[t]hose who exercised over the fifth complainant the powers attaching to the right of ownership carved out of that “ownership”, and disposed of to the respondent, subsidiary possessory “rights” over the woman’.⁷⁵

2. The Trial Judge’s Directions to the Jury

In issue was the explanation given to the jury, by the trial judge, of the fault element of the offences under s 270.3(1)(a).⁷⁶

Gleeson CJ

The Trial Judge’s Approach

The trial judge instructed the jury that to convict the respondent they had to find that:

1. the complainants were slaves;
2. the respondent knew the facts that brought them within that definition (though the respondent need not know the complainants were, in law, slaves);⁷⁷ and
3. the respondent intended to possess or use the complainants in those circumstances.⁷⁸

The Approach of the Court of Appeal

Eames JA of the Court of Appeal (with whom Maxwell P and Buchanan JA agreed) held that the trial Judge’s description was missing a critical element.⁷⁹ Eames JA stated:

... it would not be sufficient for a conviction if, rather than having possessed the [complainant] with the knowledge, intention, or in the belief that she was dealing with her as though she was mere property, the [respondent] possessed her in the knowledge or belief that she was exercising some different right or entitlement to do

⁷³ Ibid [163].

⁷⁴ Ibid [163] and [164].

⁷⁵ Ibid [164].

⁷⁶ Ibid [89].

⁷⁷ Ibid [48] and [90].

⁷⁸ Ibid [37].

⁷⁹ Ibid [38].

so, falling short of what would amount to ownership, such as that of an employer, contractor, or manager... [no matter how] exploitative and unfair... [the respondent's] treatment of the complainant was.⁸⁰

Gleeson CJ summarised that, despite some inconsistency in the reasons of Eames JA,⁸¹ Eames JA believed it was necessary for the prosecution to establish knowledge or a belief on the part of the respondent as to the *source of the powers she was exercising*, in addition to an intention to exercise those powers (the trial Judge's third element).⁸²

Rejection of the Approach of the Court of Appeal

Gleeson CJ accepted the trial judge's approach.⁸³ He noted that it was 'somewhat similar' to what the Trial Chamber in *Kunarac*, identified as the *actus reus* and *mens rea* for enslavement.⁸⁴

Gleeson CJ acknowledged that while knowledge or belief is often relevant to intention (the fault element of both offences):⁸⁵

Insofar as a state of knowledge or belief is factually relevant... it is knowledge or belief about the *facts relevant to possession or using*, and knowledge or belief about the *facts which determine the existence of the condition described in s 270.1*.⁸⁶

It was not necessary for the prosecution to establish that the respondent had any knowledge or belief concerning the *source of the powers exercised* over the complainants.⁸⁷

He further stated that:

One would have expected that a person could be convicted of the offence of possessing a slave without knowing, or caring, anything about possible alternative sources of rights or entitlements.⁸⁸

⁸⁰ Ibid [38] and [42].

⁸¹ Ibid [39] and [41]. Eames JA stated (in a footnote) that it was not necessary for the prosecution to prove that an accused knew that the power to possess or use property was an incident of the right of ownership. While Gleeson CJ agreed with this comment, he stated that it was not easy to reconcile with Eames JA's view that it is relevant to consider what right an accused believed they were exercising. Gleeson CJ stated that if it were not necessary to prove an accused knew what the rights of ownership were, it would be curious if it were relevant to consider what the accused knew or believed about other rights.

⁸² Ibid [42].

⁸³ Ibid [43] and [51].

⁸⁴ Ibid [28] and [37], citing Trial Chamber [539]-[540].

⁸⁵ Ibid [46]-[48].

⁸⁶ Ibid [49] (emphasis added).

⁸⁷ Ibid [51] (emphasis added).

⁸⁸ Ibid [39].

Gleeson CJ made two additional points regarding the Court of Appeal's approach. First, he noted that the Court of Appeal was likely concerned with the problem of distinguishing slavery from merely harsh and exploitative labour (as an employer normally also has some degree of control over the factors indicative of slavery identified in *Kunarat*).⁸⁹ Gleeson CJ recognised that '[i]t is important not to... banalise crimes against humanity, by giving slavery a meaning that extends beyond the limits set by the text, context, and purpose of the [Convention]'.⁹⁰ However, he stated that the distinction between slavery and harsh or exploitative labour is in the nature and extent of the powers exercised, not the accused's belief as to the source of those powers.⁹¹ He stated:

In particular, a capacity to deal with a complainant as a commodity, an object of sale and purchase, may be a powerful indication that a case falls on one side of the line. So also may the exercise of powers of control over movement which extend well beyond powers exercised even in the most exploitative of employment circumstances, and absence or extreme inadequacy of payment for services.⁹²

Secondly, Gleeson CJ noted that the concluding words of s 270.1 indicate that slavery can result from a contractual relationship.⁹³ Consequently, he stated that the Court of Appeal's approach constructed a false dichotomy between employment and slavery.⁹⁴

Kirby J

Kirby J's principal reason for adopting the Court of Appeal's approach was the language and structure of the Criminal Code.⁹⁵ Kirby J reasoned that, as intention is the fault element of the offences, it was not necessary for the word 'intentionally' to be included in the text of s 270.3(1) to require the prosecution to prove that the accused intentionally engaged in the relevant physical element.⁹⁶ He concluded that the word 'intention' in s 270.3(1) was therefore directed to the underlying entitlement giving rise to the physical element.⁹⁷

⁸⁹ Ibid [32] and [44]. See above under 'Factors indicative of slavery'.

⁹⁰ Ibid [32].

⁹¹ Ibid [32] and [44].

⁹² Ibid [44].

⁹³ Ibid [45]. In relation to the first ground of cross-appeal, Gleeson CJ noted that while these concluding words do not appear in the Convention definition, their addition does not alter the meaning of the preceding words - Ibid [33].

⁹⁴ Ibid [45].

⁹⁵ Ibid [91].

⁹⁶ Ibid [95].

Kirby J also identified several other reasons that he believed supported the Court of Appeal's approach.⁹⁸ Relevantly, he claimed their approach is more consistent with international law—with the Convention and the extremely grave international crime that slavery is.⁹⁹ In regard to the latter, Kirby J noted slavery's status as a crime against humanity and a rule *jus cogens*, and its close connection with human trafficking.¹⁰⁰ Kirby J agreed with Gleeson CJ that it is 'undesirable to banalise slavery' by applying it to 'circumstances that would amount to no more than a seriously exploitative employment relationship', and was of the view that it is the Court of Appeal's approach which avoids this, by restricting slavery to 'indisputably serious offences containing a substantial, not trivial intention element'.¹⁰¹

Conclusion

While the proceedings were pending, the offence of 'debt bondage' was added as s 271.8 of the Criminal Code by the *Criminal Code Amendment (Trafficking in Persons Offences) Act 2005*. The definition of 'debt bondage' now contained in the Criminal Code is based on the definition in the Supplementary Slavery Convention,¹⁰² and is as follows:

... the status or condition that arises from a pledge by a person:

- (a) of his or her personal services; or
- (b) of the personal services of another person under his or her control; as security for a debt owed, or claimed to be owed, (including any debt incurred, or claimed to be incurred, after the pledge is given), by that person if:
 - (ba) the debt owed or claimed to be owed is manifestly excessive; or
 - (c) the reasonable value of those services is not applied toward the liquidation of the debt or purported debt; or
 - (d) the length and nature of those services are not respectively limited and defined.¹⁰³

Gleeson CJ, understandably, dismissed the need to consider debt bondage in the proceedings.¹⁰⁴ However, in the Court of Appeal, Eames JA stated:

⁹⁸ Ibid [91], elaborated on in [92]-[127].

⁹⁹ Ibid [67] and [110]-[112].

¹⁰⁰ Ibid [111] and [117].

¹⁰¹ Ibid [112]. See also Ibid [117].

¹⁰² Revised Explanatory Memorandum to the *Criminal Code Amendment (Trafficking in Persons Offences) Bill 2005*, 2004-2005, at 13.

¹⁰³ Dictionary of the Criminal Code.

¹⁰⁴ *Tang* [4].

Arguably, [debt bondage] would have been proved on the evidence in this case and, if so, it would have carried a maximum sentence of 12 months' imprisonment. There being no such provision, [the respondent] was charged with slavery offences, which carried a maximum sentence of 25 years... [S]he received a total effective sentence of 10 years' imprisonment with a non-parole period of six years, although she had no prior convictions.¹⁰⁵

It is possible that, in like factual circumstances today, a Court would consider 'debt bondage' a more appropriate charge and thereby reduce the penalties for the conduct in question.

¹⁰⁵ *R v Wei Tang* (2007) 16 VR 454, [87].