

Answers to problem solving questions

Outline Answer

Section 1 Fraud Act 2006 (13.1.1): There is now a single offence of fraud which can be committed in three ways:

Section 2 (13.1.2)

Arguably, most of D's fraud could be dealt with under s2: false qualifications, internet buying, application for credit cards and the failure to pay for the coffee:

- AR: D must make a false representation
- MR: D must *know* that the representation was false or that it might be false and that s/he acted *dishonestly* with *intent* to gain or cause loss.
- Gain or loss is defined in s5.
- S2(5) applies to 'devices' or machines such as computers and would therefore cover internet fraud.

AR: The falsity of her representations are clear in all of the above except for:-

(a) failing to pay for the coffee. There is no express representation. A representation can be either express or implied (s2(4)). Whether an implied representation includes silence is as yet unknown. If so, the cases of *DPP v Ray*, *Frith*, *Raj*, *Silverman* might apply. Alternatively, s11 Fraud Act 2006 or s3(1) Theft Act 1978 may be more appropriate (see below).

(b) falsifying her credit history. There may be an express or implied representation here if she omits to disclose prejudicial information but section 3 2006 Act (failure to disclose information) may be more appropriate as a means of securing conviction.

There is no need for the representation to either operate on V's mind or cause the obtaining. Presumably, D knew her representation in each case was false.

MR: Dishonesty/Intent

The mens rea for fraud consists of three elements: dishonesty, an intent to gain or to cause a loss to another and knowledge as to the specific fraud offence. Dishonesty, using the standard in the Ghosh test, was regarded as a crucial element in the changes made by the Fraud Act 2006; however this will now need to be reassessed following the changes made by *Ivey v Genting Casinos*, which removes the need for the defendant to be aware that his actions would be regarded as dishonest by reasonable and honest people (12.1.3)

Section 3 (See 13.1.3)

Application for credit cards: D dishonestly fails to disclose to another person information which he is under a legal duty to disclose. The legal duty would have arisen by virtue of the express terms of the contract. If D had been silent regarding aspects of her history, she may not have made a clear misrepresentation under s2 but would be caught by s3. The common law test of dishonesty will apply (Ghosh/Ivey)

Section 4 (See 13.1.4)

This applies where D occupies a position in which s/he is expected to safeguard, or not to act against, the financial interests of another person and dishonestly abuses that position, intending to make a gain for himself or to cause or expose another to loss.

D has abused her professional position and is in breach of her contract of employment. Presumably, her intention was to reap the high salary. She may not have intentionally caused loss to the firm's client but the section relies on either gain or loss. The Ghosh/Ivey test of dishonesty will apply. The prosecution will not need to show that she was aware that her actions were dishonest according to reasonable standards. As long as her actions are regarded by the jury as being objectively dishonest, she will be convicted.

Section 11 (See 13.1.5)

Both the credit card applications and the coffee could be dealt with here: D obtains services by a dishonest act. The services need to be paid for. Certainly, failing to pay for the coffee applies. No misrepresentations are required. Whether D intends not to pay for the financial provision of the credit cards will be an issue of fact. She is certainly appears dishonest in either case.

Section 3(1) Theft Act 1978: Making Off Without Payment (See 13.2)

D has dishonestly made off from the spot where payment was expected for goods or services supplied and intends presumably never to pay for the coffee. No misrepresentation is required.