

Examination Questions and Answers

Question 1

Jim applied for and obtained the post of manager of a rail company, professing to have been a city banker recently made redundant. After six months the company directors awarded Jim a pay increase for his high quality work. With his new found wealth, Jim invested in a pension fund without disclosing the fact that he was in fact suffering from a serious heart condition. He then set off for a weekend in a luxury hotel, filling up his car with petrol en route and paying with the company credit card. At his destination, he polished up his appearance by having his hair cut at an exclusive hairdressing salon but slipped out without paying whilst the cashier was dealing with another customer. After two nights, Jim left the hotel telling the manager that he would pay his bill in a week's time. In fact, he had no intention of paying at all. Jim had also lied about his qualifications for the job since until that point he had been a train guard. However, he later claimed that since he had nevertheless performed his job so well, he had committed no offence. There was also a prohibition on the use of the company credit card for private purposes.

Discuss Jim's criminal liability for any offences he might have committed.

Main issues:

- *Employment/pay increase: Fraud by misrepresentation s2 Fraud Act 2006/silence/ theft in relation to appropriating the money/ but in relation to all offences: Ghosh dishonesty? Note that the prosecution will, following Ivey v Genting Casinos, no longer be required to prove that Jim was aware that his actions were dishonest according to the standards of reasonable and honest people. Instead, the court will focus on an objective test.*
- *Pension – S3 Fraud Act 2006 - fraud by false representation*
- *Petrol: no theft but s11 Fraud Act 2006 – obtaining services dishonestly*
- *Hair – S11, S2 Fraud Act 2006 (silence), S3 Theft Act 1978*
- *Hotel – s3 Theft Act 1978, but is there an agreement relating to expectation of payment?*

Question 2

Alan secretly took the office credit card and £20,000 cash from the office safe one Friday. He went to the most expensive car showroom in town and bought a sports car for £30,000 using the credit card and cash. He then drove the car to a

near-by town for a luxury weekend in a hotel. Once in town, he opened a new bank account and arranged a large overdraft facility using a fictitious identity. He polished up his appearance by having his hair cut at an exclusive hairdressing salon and managed to slip out without paying whilst the cashier was dealing with another customer. After two nights, Alan left the hotel telling the manager that he would pay his bill at the end of the week. He had no intention of doing so.

Using cheques drawn on his new bank account, he went to a casino but his gambling was not successful and he paid his debt using all the cheques in the book for £5000. The following Monday he secretly returned the credit card to the office safe.

Discuss.

Main issues:

- *Card and £20,000: theft despite returning the card.*
- *Car: s2 Fraud Act 2006*
- *Bank Account: s2/s3 Fraud Act 2006*
- *Hair: s3 TA 78/s11 + s2 Fraud Act 2006*
- *Hotel: s3 Fraud Act 2006*
- *Gambling: s2 Fraud Act 2006*
- *In all cases, dishonesty as well as the view to gain or cause a loss must be discussed. Note the changes made to the Ghosh test by Ivey v Genting Casinos – these will affect property offences in general, including the law relating to fraud.*

Question 3

Aslam needs a decorator to paint a small room and contacts Bob's company advertised on Google, the company professing to have been in existence for fifty years. An arrangement is made for Bob to inspect the room. On his way to Aslam's property, Bob drives into a self-service garage and fills up his petrol tank, shouting that the attendant should charge the cost to Bob's company account. He supplies the attendant with details of another company to which he has no connection. Bob tells Aslam the work will cost five thousand pounds and that he can start straightaway. Aslam agrees and when Bob's work is completed the next morning Aslam pays by cheque backed with a guarantee card. In fact, Aslam's bank account had been closed one month earlier. That afternoon Bob applies for and obtains a health insurance policy without disclosing the fact that he suffers from a rare heart disease. In later transpires that Bob only started his company two weeks ago when he was dismissed from his job as a chef on health grounds. Nevertheless, he claims that he genuinely believed his work was as good as any experienced decorator and that he had painted Aslam's room to a high standard.

Discuss.

Main issues:

Bob:

- *Company - s2 Fraud Act 2006/dishonesty*
- *Petrol – theft/s2 & s11 Fraud Act 2006/s3 Theft Act 1978 – making off without payment*
- *Work – misrepresentation for purposes of s2? Misrepresentation by silence/ conduct? £5000 payment: theft (attempted appropriation of A's bank account).*
- *Insurance – s3 Fraud Act 2006.*

Aslam:

- *S2 Fraud Act 2006.*

Question 4

Adele applied to a law firm for the post of solicitor. Having few qualifications, but an avid interest in law, she sent in the curriculum vitae of a highly qualified best friend. The senior partner, Ola, interviewed Adele and finding that they had much in common, appointed her to the post without bothering to read or check her qualifications. He considered her work to be of a high standard. Whilst in the office one day, Adele found the firm's photocopying card, which had a limit of five hundred and fifty copies. She used it to print out five hundred invitations to her forthcoming birthday party before returning it to the administrator. When Adele received her first salary cheque, she went to the Sunnyhill Insurance Company and completed an application form for car insurance, claiming a cheaper rate for qualified lawyers. On her way home, she popped into a store and used an expired credit card to buy a new suit and a pair of shoes. Whilst there, she had a cup of coffee in the store café and walked out without paying. Three weeks later, Adele was informed by her bank that the salary payment had not cleared. She discovered that the law firm had been declared bankrupt one week before she joined and had no funds in its bank account.

Discuss.

Adele:

Job: s2 Fraud Act 2006 Photocopying: Theft/s6 TA 68.

Insurance: s3 + s2 Fraud Act 2006

Coffee: s3 TA 68/s11 Fraud Act 2006

Suit/Shoes: s2 Fraud Act 2006

Ola:

S2 Fraud Act 2006 – employment of A

S4 Fraud Act 2006 – abuse of position: employment whilst bankrupt.