

Think box 13.1

Has D committed fraud by false representation under s2 Fraud Act 2006?

An auction house sells a painting by Picasso, believing it to be genuine. It turns out to be a forgery. Do they have MR for s2?

Answer guidance

1. AR: False representation

MR: Knowledge that the representation is false, dishonesty and intention to make a gain/loss/risk loss to another.

Any auction house will always harbour a suspicion about the authenticity of art.

They will therefore know that their representation might be false. But in the absence of dishonesty, assessed objectively (Ivey) they will lack MR.

Think box 13.2

D applies for foreign travel insurance for a forthcoming holiday and deliberately fails to disclose a recent operation involving major surgery. Whilst on holiday, her condition deteriorates and she requires expensive medical treatment. She submits a claim for this under the insurance policy. Has she committed fraud under s3?

Answer guidance

Yes. Any type of insurance contract is one of 'utmost good faith' and D will have both a contractual and also a criminal duty to disclose relevant information. The presence of dishonesty and intent to make a gain/cause loss/expose another to risk of loss will secure conviction under s1. Dishonesty is assessed objectively.

Think box 13.3

Has D committed fraud under s4?

1. D, a Citizen's Advice Bureau adviser, professing to offer free advice and assistance, obtains compensation of £5000 on behalf of an elderly client for whom she had taken legal proceedings. The adviser retains £1000 for her efforts without disclosing the fact to the client.
2. D, the manager of a building society, is in dispute with her employer. She refuses to carry out her contractual duties and spends every day dealing with her own investments whilst at work. One day, she fails to notice a robbery taking place at the counter. The society loses a substantial amount of money.

Answer guidance

1.) The adviser occupies a position in which he is expected to safeguard, or not to act against, the financial interests of another person, and dishonestly abuses that position with an intention to make a gain/cause loss to another. Fraud seems to have been committed under s4 and thus D commits an offence under s1.

2.) As above except that this is an omission, covered under s4(2). She occupies an office in which she is expected to safeguard the financial interests of another person (i.e.: employers/staff/customers) and dishonestly abuses that position.

Think box 13.4

Has D obtained services dishonestly contrary to s11 Fraud Act 2006?

1. D enters a football ground through a hole in a fence to watch a game without buying a ticket.
2. D books two tickets to a music concert over the internet using his mother's credit card without her consent.
3. D buys the cheapest underground ticket that covers only part of his journey. At his destination, he leaves the station by jumping over the barrier.

Answer guidance

1.) Under s11, a person obtains services if:

- The service is to be paid for
- D knows that payment is expected
- D does a dishonest act
- Intending to avoid payment either in full or in part at the time of the obtaining.

D is clearly guilty unless for some unexplained reason D lacks MR which is unlikely.

2.) The issue here would be whether D was dishonest. Under the Ghosh test, D may have had a genuine belief that his/her mother would not mind. Now, this will be irrelevant as the prosecution will not have to prove that he was aware that it was dishonest. All will depend on whether the court finds that his actions are dishonest according to the standards of reasonable and honest people. In Ivey, the court acknowledged that the operation of this objective test will necessarily involve an assessment of the defendant's beliefs. Nonetheless, the test remains objective.

3.) S11(1)(b) says that D must obtain the service without any payment having been made or without payment having been made in full and

- that s/he knows that payment is expected and
- that he intends to avoid paying either in full or in part at the time of the obtaining.

D has failed to pay the full price intentionally and by a dishonest act. Guilty.

Think box 13.5

Does D commit the offence of 'making off without payment' under s3(1) Theft Act 1978? D goes to a self-service petrol station five times and serves himself telling the attendant to charge the account of a former employer which he is no longer entitled to do.

Answer guidance

These were the facts of Coady [1996] Crim LR 518 in which D successfully appealed against a conviction of obtaining property by deception under s15 Theft Act 1968 on the ground that the representation was not operative because it did not precede the obtaining.

The Court of Appeal agreed that D had become the owner of the property before the false representation was made and therefore committed no offence. This could now be an offence under either s2 Fraud Act 2006 or making off without payment under s3. All elements of the AR/MR must be proved.