

Answers to self-test questions

Chapter 11

1. Explain the main objective behind the reforms of the law of fraud.

The objective was to simplify and improve the law, making it comprehensible to juries and more accessible to citizens.

2. What are the three ways in which the offence of fraud can be committed?

Section 1(2), Fraud Act 2006 states that fraud can be committed in three ways:

- by false representation
- by failing to disclose information
- by abuse of position

3. What is the test for dishonesty? Refer to case law in your answer.

Dishonesty is not defined under the Fraud Act 2006. The *Ghosh* test which used to apply to theft also applied to fraud. This has now been replaced by the test from *Ivey v Genting Casinos*. The test for dishonesty is objectively assessed: the defendant's conduct is judged according to the standards of ordinary decent people, in the context of the defendant's knowledge or honest belief as to the facts affecting his conduct.

4. How does the Fraud Act 2006 define "gain" and loss"?

The terms "gain" and "loss" are defined under s.5(2), Fraud Act 2006. They extend only to gain or loss in money or other property (s.5(2)(a)) and include any such gain or loss whether temporary or permanent (s.5(2)(b)).

Under s.5(3), "Gain" includes a gain by keeping what one has, as well as a gain by getting what one does not have.

Under s.5(4), "Loss" includes a loss by not getting what one might get, as well as a loss by parting with what one has.

5. What is a “representation”?

The meaning of representation is dealt with in ss.2(3) and 2(4), Fraud Act 2006. Under s.2(3) a representation may be made about a fact, or about law. A representation includes a representation about a person’s state of mind. Section 2(4) states that a representation may be express or implied. A representation may be made by words or by conduct; it may be made in writing or orally.

6. When is a representation “false”?

Under s.2(2), a representation is false if it is untrue or misleading, and the person making it knows that it is, or might be, untrue or misleading.

7. Can fraud be committed against a machine?

Under s.2(5), Fraud Act 1006, a representation may be regarded as made if it (or anything implying it) is submitted in any form to any system or device designed to receive, convey or respond to communications (with or without human intervention). Thus s.2(5) makes it clear that the false representation can be made to a machine as well as a person.

8. Give examples of when there might be a duty to disclose information.

Failing to declare information in a contract of insurance, or on a mortgage application form or credit card application form. There will also be a legal duty on a solicitor to disclose relevant information to his client because there is a fiduciary relationship between these two parties.

9. What type of “positions” does s.4 apply to?

A position of financial trust. There is no definition of “position of trust” under the Fraud Act 2006 but there will be a suitable relationship between a trustee and beneficiary, a director and company, a solicitor and client, a banker and client, and an employer and employee, etc.

10. Identify the elements of the offence of making off without payment.

Under s.3(1), Theft Act 1978, making off without payment requires proof that the defendant made off from the spot without having paid when payment was required or expected (*actus reus*) and that the defendant knew that payment was required or expected from him, dishonesty and an intention to avoid payment (*mens rea*).