

**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**

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 they will lack MR.

2. D uses a foreign coin to pay for parking?
3. D uses a stolen credit card to buy goods off the internet?
4. D orders a meal in a restaurant knowing that he cannot afford to pay?

AR/MR elements as above. Machines/computers can now be defrauded under s2(5). Silence/conduct might be an implied representation under s2(4) – DPP v Ray. All of these would probably now be covered by s2 and thus D commits an offence under s1.

**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.

**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 he 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 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 a genuine belief that his/her mother would not mind.

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.

In this chapter we have looked at the following:

1. The new, single offence of fraud under s1 Fraud Act 2006, which can be committed in

one of three ways:

- (a) section 2 (fraud by false representation),
- (b) section 3 (fraud by failing to disclose information), and
- (c) section 4 (fraud by abuse of position).

We have distinguished the new offence from previous deception offences.

Fraud consists of a dishonest statement and requires no reliance by V.

2. The new offence of dishonestly obtaining services under s11(1) Fraud Act 2006. We have distinguished it from previous offences of obtaining services by deception.

3. Making off without payment under s3 Theft Act 1978.

AR: A person who makes off without paying for any goods supplied or service done D must make off from the spot where payment is expected

MR: D must know that payment on the spot is required or expected and must dishonestly make off without having paid and with intent to avoid payment and never to pay.

### 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.