

## CASES ON THEFT ACT 1968 DECEPTION OFFENCES

### OBTAINING PROPERTY BY DECEPTION

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#### ***DPP v Ray* [1974] AC 370**

The defendant had ordered a meal in a restaurant and had consumed it with an honest state of mind. He then discovered that he was unable to pay for the meal and remained silent as to his change in circumstances. The defendant waited until the dining area was clear of waiters before running out. The defendant was convicted under s16(2)(a) of the Theft Act 1968 (now replaced by the Theft Act 1978).

The House of Lords held that the defendant had exercised a deception by remaining seated in the restaurant having decided not to pay. His remaining in this position created the implied and continuing representation that he was an honest customer who intended to pay the bill, thus inducing the waiters to leave the dining area unattended, giving him the opportunity to run off without paying.

#### ***R v Laverly* [1970] 3 All ER 432**

D sold a stolen motor car (reg: JPA 945C) bearing a different chassis plate and number plate (reg: DUV 111C) and was convicted of obtaining property by deception. The deception alleged was, not a false representation that D was the owner and had a good title to sell but, the false representation that the car was the original motor car, registration DUV 111C.

On appeal the sole question was whether this false representation operated on V's mind so as to cause him to hand over his cheque. The nearest answer V gave was that he bought the car because he thought D was the owner. As there was no evidence that V bought the car in reliance on that deception nor that he would have minded at all that the car did not bear its original plates, D's conviction was quashed.

#### ***R v Collis-Smith* [1971] Crim LR 716**

The defendant had put petrol into his car and then falsely told the attendant that his employer would be paying for the petrol. The defendant's appeal against conviction under s15 was successful in the Court of Appeal on the basis that his deception did not arise until after the property in the petrol had passed to him. (Note: today, the appropriate charge in such a case would be an offence under s2 Theft Act 1978.)

#### ***R v Coady* [1996] Crim LR 518**

The Court of Appeal quashed the defendant's conviction for obtaining petrol at a self-service station by the deception that he was authorised to charge the petrol to the account of his former employer, which he was no longer entitled to do. The fatal flaw in the prosecution case was that it was clear that the defendant had informed the cashier that the petrol should be charged to the account only after he had got the petrol.

The court was sceptical about the wider representation that when the defendant drove onto the forecourt he represented an intention to pay which he did not in fact possess. This was alleged to be inconsistent with the indistinguishable case of *Collis-Smith* (1971).

***MPC v Charles* [1977] AC 177**

The defendant had drawn cheques on his account, supported by his cheque guarantee card, in order to buy gaming chips at a casino. The manager of the casino had given evidence that questions of creditworthiness did not arise where a valid cheque guarantee card was proffered.

Nevertheless, the House of Lords affirmed the defendant's conviction under s16(2)(b) of obtaining a pecuniary advantage by deception. The House of Lords accepted that use of a cheque and a cheque card implied authority to do so, and that it was to be assumed that the casino would not have accepted the cheques as supported by the guarantee card, had the truth been known, ie that the defendant had exceeded his authorised limit.

***R v Lambie* [1982] AC 449**

The defendant used her own credit card knowing that authorisation had been withdrawn. She was convicted of obtaining a pecuniary advantage by deception from her bank under s16(2)(b).

The conviction was upheld by the House of Lords on the basis that if the shop assistant had known the truth she would not have accepted the credit card in payment, hence the use of the card was an operative deception. The defendant could of course, call the retailer to give evidence that she was quite happy to accept the credit card in full knowledge of the defendant's lack of authority, but the retailer is unlikely to want to run the risk of becoming an accomplice to the defendant's fraud on the credit card company.

***R v Goodwin* [1996] Crim LR 262**

The Court of Appeal held that the defendant had rightly been convicted of going equipped for theft (contrary to s25 Theft Act 1968) when the evidence showed that he had used Kenyan 5 shilling coins (coins of the same size, shape and weight as 50p coins but of about half the value) to play gaming machines in an amusement arcade. The defendant knew full well that he was trying to obtain the prize coins in a way which he knew would not have the machine owner's consent.

***R v Ghosh* [1982] QB 1053**

The defendant was a consultant at a hospital. He falsely claimed fees in respect of an operation that he had not carried out. He claimed that he thought he was not dishonest by his standards because the same amount of money was legitimately payable to him for consultation fees. The defendant's conviction under s15 was affirmed by the Court of Appeal.

(See Handout on Theft.) On the basis of the court's decision, the jury, applying their own standards, must judge the defendant's actions and beliefs and decide whether he was honest or dishonest. If the jury find that according to their standards he was dishonest, they must then establish whether the defendant knew that ordinary people would regard such conduct as dishonest.

**OBTAINING A MONEY TRANSFER BY DECEPTION**

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***R v Preddy; Slade; Dhillon* [1996] 3 All ER 481**

The defendant told various lies to building societies and other lending institutions in order to obtain mortgage advances for the purchase of houses during a rising market. The nature of the transaction was that the building society (V) would instruct its bank to make the funds available to D, who would then transfer them to the vendor (in reality, the transactions would probably be effected through D's solicitor and the vendor's solicitor). In return, D executed a mortgage on the property in favour of V and was obliged to pay

interest on the loan until such time as a life assurance policy taken out by D and charged to V should mature.

The funds were made available by one of two different mechanisms, namely, by a cheque drawn by V on its bank and in favour of D (or his solicitor), or by some form of electronic or telegraphic transfer between the paying bank and the collecting bank. Thus, essentially, a credit originally possessed by V was diminished by the amount of the loan and an exactly equivalent amount of credit was created for D. The prosecution alleged that this loss and gain represented an obtaining of property *belonging to another*, and so constituted the offence under s15 TA 1968.

The House of Lords rejected the prosecution arguments, reversed the decision of the Court of Appeal and quashed D's convictions.

(1) The only property belonging to V was the thing in action represented by the extent of the credit balance in its bank account. No part of this property, V's right to demand from V's bank an amount of money equal to the credit balance or any portion of it, was ever obtained by D. Instead, property possessed by D came into existence as soon as D's bank credited his account with the amount of the loan. This property, the thing in action constituted by D's right to demand from D's bank an amount of money equal to the credit resulting from the loan, had never belonged to anyone other than D and was not the same thing as the thing in action originally possessed by V against its bank. It would make no difference whether the transfer was to D's account or to the account of D's solicitor.

(2) Their Lordships considered that this conclusion applied whether funds were made available by cheque or electronic transfer and overruled the Court of Appeal decisions in *R v Duru* [1973] 3 All ER 715 and *R v Mitchell* [1993] Crim LR 788 in so far as they purported to decide that a payee (D) who dishonestly deceives V into drawing a cheque in his favour, thereby obtains the cheque as a thing in action which belongs to another. Moreover, though the cheque as a piece of paper belongs to another (the victim/drawer), D does not intend to deprive him permanently of it because he knows that the cheque will eventually be returned to the drawer via his bank.

(3) Though willing to acknowledge the force of many of the criticisms of the decision in *R v Halaj* [1983] Crim LR 624 that the dishonest obtaining of a mortgage advance by deception is not an obtaining of services within s1 TA 1978 (which could otherwise have been a suitable alternative offence in a case such as this), their Lordships noted that the Law Commission had proposed simple amending legislation and they were of the opinion that that was the appropriate way to deal with the matter.

## **OBTAINING A PECUNIARY ADVANTAGE BY DECEPTION**

### ***R v Callender* [1992] 3 All ER 51**

The defendant agreed to prepare accounts for a number of small businessmen, having falsely held himself out as being professionally qualified. He was convicted under s16(2)(c). It was held that "employment" covered a contract for services, and therefore covered selfemployed people who hired out their services in this way.

### ***R v Clarke* [1996] Crim LR 824**

The defendant, a private investigator, allegedly told V (a group of people who had been defrauded) that he was a former fraud squad officer and a court bailiff. In consequence, he was engaged to trace funds belonging to them. Initially, D maintained not only that he did not make the representations but also that he was not dishonest since he believed he could do the work, intended to do so, and eventually did so. He changed his plea to guilty after the judge indicated that he considered the offence committed if D made the representations, they were false and that V engaged him as a result of those representations.

The Court of Appeal allowed the appeal and quashed the conviction. The judge's indication inevitable implied that it was necessarily dishonest to tell lies to obtain employment, no matter what D's explanation for the lies or more general explanation for his conduct. This was unduly restrictive and the jury should have been given the opportunity to consider the issues.