

OBTAINING PROPERTY BY DECEPTION

INTRODUCTION

The offence of obtaining property by deception is created by s15(1) of the Theft Act 1968 which provides:

“A person who by any deception dishonestly obtains property belonging to another, with the intention of permanently depriving the other of it, shall on conviction on indictment be liable to imprisonment for a term not exceeding 10 years.”

The *actus reus* of this offence is complete if the defendant (1) by deception (2) obtains (3) property (4) belonging to another. The *mens rea* consists of the defendant acting (1) dishonestly (2) with the intention of permanently depriving the other of it, and (3) deliberately or recklessly making the deception.

ACTUS REUS

1. BY DECEPTION

Section 15(4) provides:

“For the purposes of this section ‘deception’ means any deception (whether deliberate or reckless) by words or conduct as to fact or as to law, including a deception as to the present intentions of the person using the deception or any other person.”

The deception may take the form of either words or conduct:

* Words are generally the most obvious way of practising a deception, eg, D telling V that he is selling a diamond when it is, in fact, glass.

* A person's conduct may imply certain facts which turn out to be untrue. It has been held that issuing a cheque supported by a cheque card is an implied representation by conduct that one has actual authority from the bank to use the card and to contract on behalf of the bank that it will honour the cheque. If this representation is untrue (because, for example, the bank has withdrawn its authority) it becomes a deception: *MPC v Charles* [1977] (below).

If the defendant by words or conduct has represented something which later becomes untrue, he is under an obligation to correct the misconception. Consequently, an omission can amount to a deception. See:

DPP v Ray [1974] AC 370

The deception must be as to fact or law. Thus, the lawyer who tells his/her client that every will must contain a legacy in favour of the solicitor who prepared it, would commit the offence.

Deception as to present intentions covers the person who makes a false promise, or who sits down in a restaurant impliedly representing that he intends to pay for a meal but actually knowing that he has no money on him to pay.

Section 15(4) requires the deception to be deliberate or reckless:

- * A deception will be deliberate where the defendant knows that what he represents as true is untrue.
- * A deception will be reckless where the defendant represents as true that which, as he is aware, may or may not be true.

The deception must cause the obtaining of property. The question whether the deception is an effective/operative cause of the obtaining is a question of fact. See:

R v Laverly [1970] 3 All ER 432.

The deception must precede the obtaining of property. See:

R v Collis-Smith [1971] Crim LR 716

R v Coady [1996] Crim LR 518

It would seem to follow that if the victim says he did not care whether the defendant's representation was true or false, the case against the defendant must fail because his deception cannot be an effective cause of the obtaining. However, the matter has been interpreted differently by the House of Lords and a causal link *implied*:

MPC v Charles [1977] AC 177

R v Lambie [1982] AC 449.

The deception must operate on a human mind. Where D inserts a worthless token into a machine and obtains a bar of chocolate he cannot therefore be charged under s15, but can be charged with theft. Also see:

R v Goodwin [1996] Crim LR 262

2. OBTAINS

Section 15(2) provides:

"For the purposes of this section a person is to be treated as obtaining property if he obtains ownership, possession or control of it, and 'obtain' includes obtaining for another or enabling another to obtain or to retain."

Frequently, a defendant obtains ownership, possession and control of the property but the obtaining of any of these suffices:

- * If D by deception induces V to sell goods to him the offence is complete when ownership is transferred which may occur before the goods are delivered.
- * If D by deception obtains a loan of the property the offence is complete, if all the other requirements are met, when D gets possession or control of them.

Most often a defendant will obtain the goods for himself but the offence is also committed where the defendant obtains property for another or enables another to obtain or retain. Thus the offence might be committed where, for example:

- * D by deception induces V to transfer the ownership in property to E; or where by deception D induces V, who has lent goods to E, not to enforce his right to recover goods from E.

3. PROPERTY

Section 34(1) of the TA 1968 makes it clear that the definition of property given in s4(1) applies here. Consequently, "money and all property, real or personal, including things in action and other intangible property" may be obtained by deception. The only difference is that the limitations upon what can be stolen for the purposes of theft found in ss4(2)4(4) do not apply to s15. Land may thus be obtained by deception.

4. BELONGING TO ANOTHER

By virtue of s34(1), s5(1) applies to the s15 offence. Consequently:

“Property shall be regarded as belonging to any person having possession or control of it, or having in it any proprietary right or interest.”

MENS REA

1. DISHONESTY

No definition of dishonesty is provided, nor is there any adaptation of the partial definition of dishonesty in s2. However, a direction based on *R v Ghosh* [1982] (concerning the offence in s15) is likely to consider everything that is necessary. Thus, a defendant will be dishonest where he realised that he was doing something that reasonable and honest people would regard as dishonest. See:

R v Ghosh [1982] QB 1053.

However, a *Ghosh* direction does not have to be given in every case. Indeed, in *R v Price* (1990) 90 Cr App R 409, (a case concerning the TA 1978) it was held that it was both unnecessary and potentially misleading in the majority of cases to do so. The direction must be given where the defendant “might have believed that what he is alleged to have done was in accordance with the ordinary person's idea of honesty” (per Lord Lane CJ).

2. INTENTION TO PERMANENTLY DEPRIVE

Under s15(3) the provisions in s6 apply here, with appropriate adaptation to obtaining by deception instead of appropriation. Hence, a defendant charged under s15 may be deemed to have an intention to permanently deprive in those situations covered by s6. For example:

* D borrows a train ticket from V saying that he wants to show it to the ticket office so that he can get an identical one. In fact, D intends to use it and then return it to V. As the ticket would then be valueless to V, D's intention would be “to treat it as his own to dispose of regardless of the other's rights” as under s6(1). D would thus have obtained property belonging to V (the ticket) by deception with the appropriate intention to deprive him of it permanently.

3. DELIBERATELY OR RECKLESSLY MAKES A FALSE STATEMENT

The requirement that the deception be “deliberate or reckless” has been discussed above (see ‘By Deception’).

OBTAINING A MONEY TRANSFER BY DECEPTION

THEFT (AMENDMENT) ACT 1996

(For the background to the new offences created by the Theft (Amendment) Act 1996 see the problems raised by the decision of the House of Lords in *R v Preddy* [1996] 3 All ER 481.)

Section 15A(1) of the Theft Act 1968, as inserted by the Theft (Amendment) Act 1996, provides that a person is guilty of an offence if by deception he dishonestly obtains a money transfer for himself or another.

A money transfer occurs when (a) a debit is made to one account, (b) a credit is made to another, and (c) the credit results from the debit or the debit results from the credit (S15A(2) TA 1968).

A person guilty of this offence shall be liable on conviction on indictment to imprisonment for a term not exceeding ten years (s15A(5) TA 1968).

OBTAINING A PECUNIARY ADVANTAGE BY DECEPTION

INTRODUCTION

The offence of obtaining a pecuniary advantage by deception is created by s16 of the TA 1968 which provides:

“(1) A person who by any deception dishonestly obtains for himself or another any pecuniary advantage shall on conviction on indictment be liable to imprisonment for a term not exceeding five years.

(2) The cases in which a pecuniary advantage within the meaning of this section is to be regarded as obtained for a person are cases where

- (a) [Repealed]
- (b) he is allowed to borrow by way of overdraft, or to take out any policy of insurance or annuity contract, or obtains an improvement of the terms on which he is allowed to do so; or
- (c) he is given the opportunity to earn remuneration or greater remuneration in an office or employment, or to win money by betting.

(3) For the purposes of this section ‘deception’ has the same meaning as in section 15 of this Act.”

The *actus reus* of this offence is complete if the defendant (1) by deception (2) obtains for himself or another (3) any pecuniary advantage. The *mens rea* consists of the defendant acting (1) dishonestly and (2) deliberately or recklessly making the deception.

ACTUS REUS

1. BY DECEPTION

For deception see s15 of the TA 1968 (there must be a deliberate or reckless deception that causes the obtaining of the pecuniary advantage).

2. OBTAINS FOR HIMSELF OR ANOTHER

The pecuniary advantage can be obtained by D for himself, or by D deceiving V into giving E a pecuniary advantage.

3. PECUNIARY ADVANTAGE

“Pecuniary advantage” is given a precise definition in s16(2)(b) and (c). It covers four situations:

(i) Being allowed to borrow by way of overdraft, eg where D pays for goods or services by way of a cheque drawn on his own account having been instructed by his bank not to do so, he will commit an offence under s16 if the cheque is supported by his cheque guarantee card and the bank, as a result, has to debit the amount of the cheque from D's account, thus increasing his overdraft.

(ii) Taking out a policy of insurance or annuity contract, or obtaining an improvement of the terms on which the defendant is allowed to do so, eg where D secures a policy, or a policy on better terms, by falsely stating that he is a non-smoker where this is material to the issue of the policy or its terms.

(iii) Being given an opportunity to earn remuneration or greater remuneration in an office or employment, eg where D lies about his qualifications and secures a job as a result, the job is the pecuniary advantage obtained by deception.

See *R v Callender* [1992] 3 All ER 51.

(iv) Being given the opportunity to win money by betting, eg where D by deception is allowed to bet on credit or cash terms.

MENS REA

The *mens rea* requirement under s16, dishonesty and the making of a deliberate or reckless deception, have been discussed under the s15 offence, above. This is a question for the jury to decide:

R v Clarke [1996] Crim LR 824.

DISHONESTLY RETAINING A WRONGFUL CREDIT

THEFT (AMENDMENT) ACT 1996

Section 24A TA 1968, as inserted by the Theft (Amendment) Act 1996, provides:

- “(1) A person is guilty of an offence if-
- (a) A wrongful credit has been made to an account kept by him or in respect of which he has any right or interest;
 - (b) he knows or believes that the credit is wrongful; and
 - (c) he dishonestly fails to take such steps as are reasonable in the circumstances to secure that the credit is cancelled.
- (2) References to a credit are to a credit of an amount of money.
- (3) A credit to an account is wrongful if it is the credit side of a money transfer obtained contrary to section 15A of this Act.
- (4) A credit to an account is also wrongful to the extent that it derives from-
- (a) theft;
 - (b) an offence under section 15A of this Act;
 - (c) blackmail; or
 - (d) stolen goods.”

A person guilty of this offence shall be liable on conviction on indictment to imprisonment for a term not exceeding ten years (s24A(6) TA 1968).