

THE THEFT ACT 1978

OBTAINING SERVICES BY DECEPTION

INTRODUCTION

Section 1 of the Theft Act 1978, as amended by the Theft (Amendment) Act 1996, provides:

“(1) A person who by any deception dishonestly obtains services from another shall be guilty of an offence.

(2) It is an obtaining of services where the other is induced to confer a benefit by doing some act, or causing or permitting some act to be done, on the understanding that the benefit has been or will be paid for.

(3) Without prejudice to the generality of subsection (2) above, it is an obtaining of services where the other is induced to make a loan, or to cause or permit a loan to be made, on the understanding that any payment (whether by way of interest or otherwise) will be or has been made in respect of the loan.”

By s4 the offence is triable either way. On summary conviction it is punishable by imprisonment for a term not exceeding six months and/or a fine not exceeding £1,000, and on indictment by imprisonment for a term not exceeding five years and/or a fine.

Actus reus

‘Deception’ in s1 has the same meaning as in s15 Theft Act 1968. That is, it 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 (s5(1) TA 1978).

‘Services’ are services provided commercially by the victim of the deception. Services are obtained only when a person is induced to confer a benefit on the understanding that the benefit has been or will be paid for: s1(2). Thus, a person who hires a surveyor without ever intending to pay him may commit an offence under s1. But a person who tells lies to a neighbour in order to obtain the loan of a lawn-mower does not commit an offence because the benefit is not conferred on the understanding that it has been or will be paid for.

Section 1(3) was inserted by the Theft (Amendment) Act 1996.

Mens rea

The prosecution must prove that the defendant acted dishonestly.

EVASION OF LIABILITY BY DECEPTION

INTRODUCTION

Section 2 of the Theft Act 1978 provides:

“(1) Subject to subsection (2) below, where a person by any deception—
(a) dishonestly secures the remission of the whole or part of any existing liability to make a payment, whether his own liability or another's; or

(b) with intent to make permanent default in whole or in part on any existing liability to make a payment, or with intent to let another do so, dishonestly induces the creditor or any person claiming payment on behalf of the creditor to wait for payment (whether or not the due date for payment is deferred) or to forgo payment; or
(c) dishonestly obtains any exemption from or abatement of liability to make a payment;
he shall be guilty of an offence.

(2) For the purposes of this section 'liability' means legally enforceable liability; and subsection (1) shall not apply in relation to a liability that has not been accepted or established to pay compensation for a wrongful act or omission."

This offence is triable and punishable in the same way as the s1 offence (s4 TA 1978).

Section 2(1) is divided into three parts. Paras (a) and (b) deal with cases where there is an existing liability to make a payment and the defendant by deception gets the creditor to remit the whole or part of the debt (para (a)); or induces the creditor to wait for payment or to forgo payment (para (b)). Para (c) is aimed also at cases where the deception exempts the defendant or another from a liability which would have arisen but for the deception, or which obtains for the defendant or another a reduced liability. Note that para (b) requires an intent to make permanent default.

Section 2(2) makes it clear that s2(1) does not apply in relation to a liability that has not been accepted or established to pay compensation for a wrongful act or omission. Therefore, if a person lies about the circumstances of an accident in order to avoid the bringing of civil proceedings for negligence against him, he does not commit a criminal offence. The claimant can launch civil proceedings if he thinks that he had been deceived when he absolved the other from liability (CLRC, Thirteenth Report, para 16).

Section 2(1)(a) - Remission of a Debt

Actus reus

Section 2(1)(a) covers the deception which dishonestly secures the remission of the whole or part of an existing liability to make a payment. An example would be where a man borrows £100 from a neighbour and, when repayment is due, tells a false story of some family tragedy which makes it impossible for him to find the money; this deception persuades the neighbour to tell him that he need never repay the loan (CLRC, Thirteenth Report, para. 13).

The existing liability to make a payment may be the defendant's own liability or another's.

Mens rea

The defendant must dishonestly practise a deception.

Section 2(1)(b) - Delaying Payment of a Debt

Actus reus

Section 2(1)(b) is concerned with the stalling debtor. It provides that a creditor who by deception dishonestly induces his creditor to wait for payment or to forgo payment is guilty of an offence if, and only if, he intends to make permanent default in whole or in part of his liability to pay (CLRC, Thirteenth Report, para. 14).

Section 2(3) provides that a person induced to take a cheque or other security for money by way of conditional satisfaction of an existing liability is to be treated not as being paid but as being induced to wait for payment.

The liability to pay can be the accused's own or another's.

Mens rea

The defendant must make his deception with intent to make permanent default in whole or in part on any existing liability to make a payment of his own, or with intent to let another do so.

Section 2(1)(c) - Avoiding Incurring a Debt

Actus reus

For there to be an offence under s2(1)(c) there must be dishonesty and a deception which obtains any exemption from or abatement of liability to make a payment. For example, the ratepayer who makes a false statement in order to obtain a rebate to which he is not entitled is acting dishonestly and is practising a deception in order to obtain an abatement of his liability to pay rates and, accordingly, would be guilty of an offence under s2(1)(c) (CLRC, Thirteenth Report, para. 15).

'Obtains' includes obtaining for another or enabling another to obtain (s2(4)).

Exemption means to be let off the liability to pay, and abatement means the reduction of the amount which must be paid.

Mens rea

The defendant must act dishonestly.

MAKING OFF WITHOUT PAYMENT

INTRODUCTION

Section 3 of the Theft Act 1978 provides:

"(1) Subject to subsection (3) below, a person who, knowing that payment on the spot for any goods supplied or service done is required or expected from him, dishonestly makes off without having paid as required or expected and with intent to avoid payment of the amount due shall be guilty of an offence.

(2) For purposes of this section 'payment on the spot' includes payment at the time of collecting goods on which work has been done or in respect of which service has been provided.

(3) Subsection (1) above shall not apply where the supply of the goods or the doing of the service is contrary to law, or where the service done is such that payment is not legally enforceable.

(4) Any person may arrest without warrant anyone who is or whom he, with reasonable cause, suspects to be, committing or attempting to commit an offence under this section."

By s4 the offence is triable either way. On summary conviction it is punishable by imprisonment not exceeding six months and/or a fine not exceeding £5,000, and on indictment by imprisonment for a term not exceeding two years and/or a fine.

Actus reus

Section 3 is confined to circumstances where goods are supplied or a service is done on the basis that payment will be made there and then. The obvious example is the restaurant where everyone knows that the meal is supplied on the understanding that the bill will be paid before the diner leaves the restaurant (CLRC, Thirteenth Report, para. 19).

Further examples of the application of s3 are the passenger who at the end of his journey in a taxi runs off without paying his fare; and the motorist who has had his car's petrol tank filled at a garage and when the attendant is called to the telephone drives off without paying for the petrol (CLRC, Thirteenth Report, para. 20).

Section 3 applies also to the collection of goods on which work has been done or in respect of which service has been provided. Examples are the collection from a shop of shoes which have been repaired or clothes which have been cleaned (CLRC, Thirteenth Report, para. 19).

Section 3 is intended to protect legitimate business concerns only (CLRC, Thirteenth Report, para. 19). It does not apply when the supply of the goods or the doing of the service is contrary to law: s3(3).

An offence is not committed under s3 if the payment required or expected is not legally due. See:

Troughton v Metropolitan Police [1987] Crim LR 138.

Mens rea

It must be proved that the defendant knowing that payment on the spot was required or expected, made off dishonestly, and with intent to avoid payment of the amount due. See:

R v Allen [1985] 2 All ER 641.