

The Fraud Act 2006

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Fraud Act 2006

2006 CHAPTER 35

Guildhall
Chambers

s.2 Fraud by False Representation

- (1) A person is in breach of this section if he-
 - (a) dishonestly makes a false representation, and
 - (b) intends, by making the representation-
 - (i) to make a gain for himself or another,
 - or
 - (ii) to cause loss to another or to expose another to a risk of loss.
- (2) A representation is false if –
 - (a) it is untrue or misleading, and
 - (b) the person making it knows that it is, or might be, untrue or misleading

s.2 Fraud by False Representation (Cont.)

- (3) "Representation" means any representation as to fact or law, including a representation as to the state of mind of-
 - (a) the person making the representation, or
 - (b) any other person.
- (4) A representation may be express or implied.
- (5) For the purposes of this section 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).

From deceiving to representations

The present law has been directed at consequences caused by D's dishonest false representations.

The new law is directed at an earlier stage of D's conduct, namely the making of the representations

Actus reus

1. made a representation;

Actus reus

2. that was false,
in the sense of being untrue
or misleading;

Mens rea

3. made it dishonestly;

Mens rea

4. by doing so, intended
to gain, or
cause loss to another, or
expose another to the risk of loss;

and

Mens rea

5. it was false,
in the sense that he knew that it was,
or might be,
untrue or misleading.

s.3 Fraud by Failing to Disclose

3. Fraud by failing to disclose information

A person is in breach of this section if he -

- (a) dishonestly fails to disclose to another person information which he is under a legal duty to disclose, and
- (b) intends, by failing to disclose the information-
 - (i) to make a gain for himself or another, or
 - (ii) to cause loss to another or to expose another to a risk of loss.

s.4 Fraud by Abuse of Position

4. Fraud by abuse of position

- (1) A person is in breach of this section if he-
 - (a) occupies a position in which he is expected to safeguard, or not to act against, the financial interests of another person,
 - (b) dishonestly abuses that position, and
 - (c) intends, by means of the abuse of that position-
 - (i) to make a gain for himself or another, or
 - (ii) to cause loss to another or to expose another to a risk of loss.
- (2) A person may be regarded as having abused his position even though his conduct consisted of an omission rather than an act.

s.6 - Articles for use in Frauds

6. Possession etc. of articles for use in frauds

- (1) A person is guilty of an offence if he has in his possession or under his control any article for use in the course of or in connection with any fraud.

s.7 - Articles for use in Frauds

7. Making or supplying articles for use in frauds

- (1) A person is guilty of an offence if he makes, adapts, supplies or offers to supply any article-
 - (a) knowing that it is designed or adapted for use in the course of or in connection with fraud, or
 - (b) intending it to be used to commit, or assist in the commission of, fraud.

- 8.** ... "article" includes any program or data held in electronic form.

s.11 – Obtaining Services Dishonestly

11. Obtaining services dishonestly

- (1) A person is guilty of an offence under this section if he obtains services for himself or another-
 - (a) by a dishonest act, and
 - (b) in breach of subsection (2).

s.11 – Obtaining Services Dishonestly (Cont.)

- (2) A person obtains services in breach of this subsection if-
- (a) they are made available on the basis that payment has been, is being or will be made for or in respect of them,
 - (b) he obtains them without any payment having been made for or in respect of them or without payment having been made in full, and
 - (c) when he obtains them, he knows-
 - (i) that they are being made available on the basis described in paragraph (a), or
 - (ii) that they might be,but intends that payment will not be made, or will not be made in full.

Miscellaneous Provisions

- **s.9** Participating in a fraudulent business carried on by a sole trader
- **s.12** Liability of Company Officers
- Conspiracy to Defraud still exists