

## **Chapter 10: Fraud**

### **Problem Questions**

Below is an example of a problem question and a worked answer. The answer is written in bullet-point form, highlighting how the structure for answering problem questions (discussed in the 'eye on assessment' section of every chapter) can be applied in this area. Remember that when you write your essays, you should use full prose (ie, not bullet-points).

Sarah is awarded a bursary towards the cost of her law text books by a charity. She had based her application on the fact that she has no income, even though she subsequently gets a part time job.

She buys the text books on her credit card, even though she knows that she is over her credit limit on the card and has been instructed by the bank not to use it.

At the start of term, she tells the library that some books she had borrowed have been stolen from her car so that she does not have to return them.

Discuss Sarah's potential liability.

**Introduction:** Your introduction should highlight that you understand the topic of the question (fraud offences under the Fraud Act 2006), and also indicate how you are going to structure your answer. As you have a single defendant, a chronological analysis of the problem seems most appropriate.

**Step 1:** The first potential criminal event arises where Sarah (S) continues to receive the bursary after starting work. However, your discussion should reflect the lack of clear facts within the problem, e.g., we don't know whether the bursary was a single payment or on-going, whether the terms of the bursary mean S cannot accept work after the money is transferred, whether S is required to inform the providers if she later accepts work, whether S knew about the job before applying for the bursary, and so on. Good answers will highlight these uncertainties, not pretend they don't exist.

**Step 2 and 3:**

- This could be fraud by false representation (section 2): (i) If she lied in her application (i.e., if she knew she was going to start work, and stated that she was not), (ii) If she continues to receive the bursary when she starts work, representing falsely that she is still entitled.
- Alternatively, this could be fraud by failure to disclose (section 3): (i) If she knew and did not disclose information about the job when applying, (ii) or when she started the job and did not inform the providers.
- In both cases, the main uncertainty in the elements of the offence relate to the absence of facts (eg, were her representations false, and/or did she have a duty to disclose?). There may also be questions about whether her conduct was dishonest, particularly where the sums of money may have been quite small.

**Step 4:** There are no applicable defences, and so no discussion is required.

**Step 5:** Subject to the uncertainties highlighted above, S is likely to be liable for fraud.

**Step 1:** The second potential criminal event arises where S buys the books using her credit card.

**Step 2:** The most likely offence here would be fraud by false representation (section 2).

**Step 3:**

- Does S make a false representation? Yes, as when presenting the card S is representing that she is authorised to use it.
- Does S know the representation is false? Yes, as she has been instructed by the bank.
- Does she have an intention to make a gain by that representation? Yes, as she intends to gain the books.

- Does she act dishonestly? The test in *Ivey* should be applied, and is very likely to be satisfied.

**Step 4:** There are no applicable defences, and so no discussion is required.

**Step 5:** It is likely that S will be liable for fraud.

**Step 1:** The final potential criminal event arises where S tells the library that her books have been stolen.

**Step 2:** This could be fraud by false representation (section 2) or fraud by abuse of position (section 4).

**Step 3:**

- Section 2: S commits the offence with her false statement to the library, which is likely to be considered dishonest, and is done with the intention to gain the books.
- Section 4: S commits the offence because her possession of the books (on loan) puts her in a position where she is expected to safeguard the financial interests of another (the library). Her lies can be seen as a dishonest abuse of that position.

**Step 4:** There are no applicable defences, and so no discussion is required.

**Step 5:** It is likely that S will be liable for fraud.

**Conclusion:** Your conclusion should briefly summarise your findings of likely liability. You may also want to highlight the issues of overlapping offences apparent within the essay, not least the fact that fraud by false representation seems to overlap almost entirely with the other fraud offences. You could also highlight that theft offences could also have been charged in the alternative where D appropriated property.

## Essay Questions

There are several areas of interest for essay-type questions in relation to fraud. For example, the overlap between theft and fraud, the move within the Fraud Act 2006 to a form of inchoate liability, the complexity of the Fraud Act 2006, and so on.

Below is an example of an essay-type question, and a bullet-point plan for a possible answer. This is for illustration purposes only. When writing an essay of this kind yourself, there will usually be alternative ways you could structure your answer, alternative points of discussion that could be raised, and you would certainly be expected to write in full prose (ie, not in bullet-point form). The most important point to take from these plans is how they focus on identifying and discussing the subject matter of the debate within the question, not simply listing information about the relevant topic.

The reform of fraud within the Fraud Act 2006, changing fraud to an inchoate offence, is one of the worst examples of over-criminalisation within the modern law. Discuss.

### Introduction:

- The issues within this essay question are quite complex, and so you have some work to do in your introduction to clarify what the discussion is about.
  - You need to make clear that you understand the transition of fraud to inchoate offences: to offences where D must intend to make a gain or risk loss as opposed to actually make a gain in fact by her deception.
  - You should also clarify what you understand by 'overcriminalisation'. In this context, the statement is simply claiming that the current law applies too widely, criminalising defendants whose conduct should not be caught within the offences.
- Having unpacked the question, it is then useful to tell your reader how you are going to structure your discussion. For this kind of question, you are essentially

being asked to discuss for and against the controversial part of the statement (i.e., 'is one of the worst examples of overcriminalisation within the modern law').

**Body of the essay:**

- Arguments in favour of the statement:
  - It can be argued that D does not deserve to be caught within the offence where she is not successful in deceiving V, or this is not the reason for V parting with her property. In this regard, there is an interesting academic debate around the potential for fraud to apply to 'standard' sales patter, as well as the potential application to any lying. The argument here is that whilst potentially dishonest, such behaviour is not deserving of criminalisation.
  - Another issue with these offences is that when the general inchoate offences are applied to them, they become (essentially) double inchoate liability. For example, an attempt to commit fraud under the current law simply requires D to go beyond mere preparation to the false representation rather than to an act of deception. Again, it can be argued that this brings the line of criminality forward to an unacceptable degree.
- Arguments against the statement:
  - It can be argued that the current offences do not over-criminalise. We could contend that the old offences were too narrow (ie, whether V is deceived does not impact D's blameworthiness), and we can highlight the role of dishonesty within the current law as a way of avoiding inappropriate criminalisation.
  - On a different line, we could also contend that whilst the current Act may over-criminalise to an extent, that this is not one of the worst examples in modern times. Highlighting the rapid expansion of other offences such as assisting and encouraging (Part 2 of the Serious Crime Act 2007), we could contend that the expansion of fraud offences has been relatively controlled and principled.

**Conclusion:**

- Your conclusion should provide a brief overview of your discussion, and summarise whether (in general terms) you have come down in favour of the statement or against it. You may also choose to link this (in positive or negative terms) to the expansion of offences in other areas of the criminal law.